United States Court of Appeals for the Second Circuit



APPENDIX

75-7202

IN THE

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 75-7202

ANNIE TYSON, ET AL.,

PLAINTIFFS-APPELLEES

V.

EDWARD W. MAHER, COMMISSIONER OF THE STATE OF CONNECTICUT : The Honorable WELFARE DEPARTMENT, ET AL.,

DEFENDANT-APPELLANT :

: Appeal fromtthe United States

: District Court for the : District of Connecticut

July 11, 1975

: M. Joseph Blumenfeld

: District Judge

JOINT APPENDIX

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Attorney for Plaintiffs-Appellees

PAGINATION AS IN ORIGINAL COPY

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

March 22, 1974	Complaint for Declaratory and Injunctive Relief, Filed.
	Motion for Temporary Restraining Order, Filed.
March 27, 1974	Motion of Robin Jackson to Intervene as Plaintiff, Filed.
March 28, 1974	Motions of K. Downer and H. Brown to Intervene as Plaintiffs, Filed.
April 1, 1974	Agreement in lieu of scheduled Hearing on Motion for Temporary Restraining Order, Filed.
April 9, 1974	Motions of Ethel C. Williams, Susan Otka, Francis L. James, Jr., Thomas E. Burgess, and Jayne V. Pierson to Intervene as Plaintiffs, with affidavits, Filed.
April 15, 1974	Stipulation of parties that Motions of Ethel C. Williams, Susan Otka, Francis L. James, Jr., Thomas E. Burgess, and Jayne V. Pierson to Intervene as Plaintiffs be granted, Filed.
April 17, 1974	Stipulation Regarding Motions of R. Jackson, K. Downer, and H. Brown to Intervene as Plaintiffs, Filed.
April 22, 1974	Motion of Fern Carver to Intervene as Plaintiff, Filed.
April 29, 1974	Amended Complaint for Declaratory and Injunctive Relief, Filed.
June 14, 1974	Motion of Ethel C. Williams, Susan Otka, Francis L. James, Jr., Thomas E. Burgess, and Jayne V. Pierson to Intervene as Plaintiffs, Granted.

June 17, 1974	Plaintiffs' Motion for Preliminary Injunction, Filed.			
June 25-26, 1974	Hearing on Plaintiffs' Motion for Preliminary Injunction, with submission of Exhibits, Held.			
July 9, 1974	Plaintiffs' Memorandum of Law in Support of Their Motion for Preliminary Injunction, with Affidavits, Filed.			
August 8, 1974	Brief of United States on behalf of the Department of Agriculture as Amicus Curiae, Filed.			
November 7, 1974	Answer to Amended Complaint, Filed.			
December 23, 1974	Deposition of Cecil F. McCarthy, Director of Food Stamp Program, Filed.			
February 24, 1975	Memorandum of Decision, Filed			
February 28, 1975	Judgment, Entered.			
March 27, 1975	Notice of Appeal by Defendant, Filed.			
	Defendant's Application for Partial Stay Order, Filed.			
March 31, 1975	Defendant's Application for Partial Stay Order, Denied.			

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTIOUT

ANNIE TYSON individually and on behalf of all others similarly situated,

Plaintiff

vs.

MICHOLAS NORTON, Commission-: or of Welfare, State of : Connecticut and Cecil F. : McCarthy, Director of the : Food Stamp Program of the Connecticut State Welfare : Department.

CIVIL 110. H 74/95

Defendants

COMPLAINT

Now come plaintiffs by their attorneys and complain against defendants as follows:

PRELIMINARY STATEMENT

This is an action for declaratory and injunctive relief to protect plaintiffs' right under the federal Food Stann let and regulations and instructions promulgated thereunder, and the Equal Protection and Due Process Clauses of the United States Constitution. Relief is sought to enable the plaintiffs, needy applicants for food stamps subject to hunger and malnutrition, to receive their food stamps entitlements promptly. Specifically by this action, plaintiffs seek to enforce the federal requirements of action on food stamp applications within thirty days, including the actual receipt of benefits within thirty days for those determined eligible, and adequate staff and facilities to complete said processing within the required time period.

FIRST COUNT

- 1. Jurisdiction is conferred on this Court by 28 U.S.C.. Sec. 1343 (3) and (4), Sec. 1331 and Sec. 1337. The matter in controversy arises under an act of Congress regulating commerce and exceeds in value, exclusive of interest and costs, \$10,000.
- 2. The plaintiffs' action for declaratory and injunctive relief and for damages is authorized by 28 U.S.C. Secs. 3201 and 2202 and by Rule 57 of the Federal Rules of Civil Procedure which relate to declaratory judgments, and by 42 U.S.C. Sec. 1983 which provides redress for the deprivation under color of state law of rights, privileges and immunities secured to all citizens and persons within the jurisdiction of the United States by the Constitution and laws of the United States.
- Federal Rules of Civil Procedure. The members of the class are those applicants for food stamps in the State of Connecticut whose applications for food stamps are not acted upon within thirty days from the date of application and, for those determined eligible, who do not receive their benefits within thirty days from the date of application. This class is so numerous that joinder of all members is impracticable. There are questions of law or fact

common to the class, and the claims of plaintiff are typical of those of the class. Plaintiff will fairly and adequately protect the interest of the class. Defendants have acted or failed to act on grounds generally applicable to the class, thereby making appropriate declaratory and injunctive relief with respect to the class as a whole.

- 5. Defendant NICHOLAS NORTON, Commissioner of Welfare for the State of Connecticut, is charged with the statewide supervision of the Food Stamp program. He is responsible for adopting and implementing the policy, rules and regulations of the Connecticut State Welfare Department (hereafter "Welfare Department") with respect to the Food Stamp program.
- 6. Defendant CECIL F. MCCARTHY, Director of the Food Stamp program for the Welfare Department, is responsible for the statewide administration of the Yood Stamp program. He is responsible for assuring statewide compliance with the policy, rules and regulations of the Welfare Department with respect to the Food Stamp program.
- 7. Plaintiff TYSON lives with her three children. Their sole source of support is Social Security in the amount of 2219.1. per month and supplementary APDC assistance in the amount of \$91.69 per month.
- 8. On February 13, 1974, plaintiff TYSON went to the office of the Welfare Department in Bridgeport, Connecticut to apply for assistance under the AFDC program and for food stamps under the Food Stamp program. She was told to return on February 27, 1974, although she was on February 13th, ready, willing, and able to complete her applications for AFDC and food stamps.
- 9. Plaintiff TYSON returned on February 27, 1974, to the State Welfare Department and completed her application for ATDC

and for food stamps. She was told on February 27th that her application for AFDC would be granted, and that she could expect to receive an assistance check within a week. She was told that she was therefore also eligible for food stamps, but would not receive her food stamps for four to six weeks from the February 27th date.

- 10. Plaintiff TYSON received her AFDC assistance, but has not yet received her food stamps, although more than 30 days have passed since her initial application February 13, 1974.
- 11. The Food Stamp Act, 7 U.S.C. Sec. 2011, et seq., was enacted by Congress "to alleviate hunger and malnutrition" by establishing a food stamp program to permit "low-income households to purchase a nutritionally adequate diet."
- nominations to be utilized as a medium of exchange for food in retail groceries. 7 U.S.C. Sec. 2015. Food stamps are purchased for cash by eligible households at amounts less than their face value, the charges being determined on the basis of family income. 7 U.S.C. Sec. 2016. The difference between the face value of the stamps and the purchase price is termed the "bonus" and the cost of the "bonus" is born entirely by the federal government.
- Program, and State Statutes authorize the Welfare Department to administer the program here. Connecticut General Statute Sec. 17-2a. That same statutory section as well as regulations promulgated by the Welfare Department, Vol. I, Supp. B, F.S.-110 recognize that by choosing to participate, the state must comply with the Federal Wood Stamp Act, and regulations and instructions issued thereunder. 7 U.S.C. Sec. 2019, and 7 C.P.R. Secs. 279.3 and 271.1 et sec.

- Agriculture has promulgated regulations and instructions requiring that action be taken on food stamps applications within thirty days from the date of application. 7 C.F.R. Sec. 271.4(a) (3), F.M.S. Instructions 732-1. Federal law also explicitly requires the provision of adequate staff and facilities to process applications within thirty days. 7 C.F.R. Sec. 271.1 (h).
- 15. Defendants Norton and McCarthy have railed to process the application of plaintiff TYSON within thirty days from the date of her application. Upon information and belief, there are numerous applications for food stamps pending in the State of Connecticut at the present time which have been pending longer than thirty days.
- entitled to have their applications processed within thirty days from the date of application and, if determined eligible, to receive their food stamps within the thirty day period as required by the foregoing statutes and regulations, but they have not had their applications acted upon or received said benefits.
- 17. By failing to follow the "thirty day requirement" of federal law, defendants have denied, and continue to deny plaintiff and members of the class she represents their rights under the Food Stamp Act and the regulations and instructions issued pursuant thereto, and therefore are in violation of the Supremacy Clause of the United States Constitution.
- 18. Plaintiff and members of the class they represent have no adequate remedy at law, and have suffered and will continue to suffer irreparable injury as a result of defendants! actions complained of herein.

SECOND COUNT

- 1-16. Paragraphs 1 through 16 are hereby incorporated by reference the same as if fully pleaded.
- 17. By failing to process their applications within thirty days, defendants have denied and continue to deny plaintiff and the members of the class she represents their rights under due process clause of the Fourteenth Amendment to the United States Constitution by administering the food stamp program in the State of Connecticut in an arbitrary and capricious manner.
- 18. Plaintiffs and members of the class they represent have no adequate remedy at law and hayd suffered and will continue to suffer irreparable injury as a result of defendants actions complained of herein.

THIRD COUNT

- 1-16. Paragraphs 1 through 16 are hereby incorporated by reference the same as if fully pleaded.
- '17. By failing to process the applications of plaintiff and members of the class she represents within thirty days of the date of application and, for those determined eligible, by failing to provide benefits within thirty days from the date of application while processing the application of other food stamp applicants and providing benefits to those determined eligible within the thirty-day time period, defendants have denied and continue to deny plaintiff and members of the class she represents their rights under the equal profection clause of the Fourteenth Amendment to the United States Constitution.
- 18. Plaintiff and members of the class she represents have no adequate remedy at law and have suffered and will continue to suffer irreparable injury as a result of the defendants! action complained of herein.

PRAYER FOR RELIEF

WHEREFORE plaintiff, individually and on behalf of all others similarly situated, prays that this Court:

- 1. Enter a temporary restraining order enjoining defendants Norton and McCarthy from continuing to cause irreparable harm to plaintiff and others persons similarly situated by failing to act upon their applications for food stamps within thirty days and, for those determined eligible, by failing to give them food stamps within the same thirty-day period;
- 2. Declare that the action of the defendants in failing to process the food stamp applications of the members of the plaintiff class within thirty days and in failing to give benefits to those determined eligible within the same thirty-day period conflicts with the Food Stamp Act and regulations and instructions issued thereunder, and is therefore invalid under the Supremacy Clause of the United States Constitution;
 - 3. Declare that the action of the defendants in failing to process the food stamp applications of the members of the plaintiff class within thirty days and in failing to give benefits to those determined eligible within the same thirty-day period is unconstitutional for the reason that it violates the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution;
 - 4. Issue preliminary and permanent injunctions enjoining defendants Norton and McCarthy from failing to process food stamp applications of plaintiff and members of the plaintiff class within thirty days from the date of the application and from failing to provide benefits to those determined eligible within the same thirty-day period; and ordering forward adjustments in

the purchase price of food stamps for plaintiff and members of the plaintiff class, the processing of whose applications were wrongfully delayed and, for those determined eligible, the receipt of whose food stamps were wrongfully delayed.

5. Allow plaintiff her costs herein and reasonable attorney's fees, and also grant her and all other persons similarly situated such additional or alternative relief as may seem to this Court just, proper, and equitable.

Respectfully Submitted,

Marilyn Kaplan Katz

Ira Horowitz

Fairfield County Legal Services, Inc.

412 East Main Street

Bridgeport, Connecticut 06608

Charles A. Pirro III
Fairfield County Legal Services, Inc.
33 South Main Street
Norwalk, Connecticut 06854

STATE OF CONNECTICUT)

:ss. Rockville, April 1, 1974

TOLLAND COUNTY)

AFFIDAVIT

- I, ETHEL C. WILLIAMS, being duly sworn according to law, hereby depose and state:
- 1. I am a citizen of the United States and of the State of Connecticut and reside at 146 Prospect Street, Rockville, Connecticut, with my three minor children.
- 2. On February 19, 1974, I signed an affidavit which I am informed was submitted to the Court in Class v. Norton, Civil No. 14,764 (D. Conn.) for the purpose of demonstrating that my application for Aid to Families with Dependent Children (AFDC) benefits was not processed within the required 30-day period. (A copy of that Affidavit is attached as Appendix A.).
- 3. On about March 12, 1974, I received my W-52T form from the Connecticut State Welfare Department notifying me that my AFDC application had been approved by the Manchester District Office on March 6, 1974, that I would receive AFDC benefits back to January 9, 1974, the date I applied for AFDC benefits, and that state assistance would begin on March 20, 1974. To date, however, eighty-one (81) days after I sought to apply for AFDC benefits and food stamps,

I have not received any benefits from the State of Connecticut.

(A copy of the W-52T form is attached as Appendix B).

- 4. I have not paid my March, 1974, rent to my landlord because early in March, 1974, a Mrs. Scott of the Manchester District Office notified Jean Pearsall, Welfare Director for the Town of Vernon, not to issue a rent voucher to for the month of March as State assistance would begin immediately enabling me to pay my March rent out of my AFDC flat grant. Because I have not received any money from the welfare department to date I today received a letter from my landlords, Messrs, Franklin and Seekins (a copy of which is attached as Appendix C) indicating that unless the March, 1974, rent is paid immediately they will have no recourse except to institute summary process proceedings against me.
- 5. In addition, because I have yet to receive any cash assistance from the Connecticut State Welfare Department my children's hair has grown very long and both need shoes. I am embarrassed because of their physical appear to continue sending them to school.
- 6. Although I have recieved food vouchers in the amount of \$24.00 per week from the Town of Vernon during the pendency of my food stamp application to feed myself and my three children, I do not receive the "bonus" or increase in purchasing power accorded to all food stamp recipients.

Moreover, I have been informed by Ms. Pearsall that I have incurred an absolute statutory liability to reimburse the Town of Vernon for any sums of money or voucher payments given to me.

- 7. I have been informed by the attorneys at the Tolland-Windham Legal Assistance Program in Rockville that I am eligible to receive food stamps and according to welfare policy should be authorized to purchase \$71.00 worth of food stamps for \$44.50 every two weeks which constitutes a "bonus" every two weeks of \$26.50.
- 8. I did in fact receive a food stamp authorization card which expired on March 31, 1974. Because I had received no cash payments from the State Welfare Department I had no funds with which to cash the food stamp authorization card to purchase food stamps.
- 9. Since I applied for AFDC benefits and food stamps
 I have become emotionally upset as a direct result of the
 Welfare Department's failure to approve my AFDC application
 and food stamp application within the 30-day time period
 and its failure to issue food stamp authorization cards and
 AFDC benefits within the same time period. Despite assurances
 from both my attorneys and Ms. Pearsall I do not know where to
 turn for help at this point.

ETHEL C. WILLIAMS

Subscribed and sworn to before me, this 1st day of April, 1974.

James C. Sturdevant Commissioner of the Superior Court

STATE OF CONNECTICUT)
:ss - Rockville, February 19, 1976
TOLLAND COUNTY)

AFFIDAVIT

- T, ETHEL C. WILLIAMS, being duly sworn according to latt. hereby depose and state:
- 1. I am a citizen of the United States and of the Flates of Connecticut residing at 146 Prospect Street, Pockville, Connecticut, with my three minor children.
- 2. On Wanuary 9, 1974, I telephoned the Manchester
 District Office of the Connecticut State Welfare Department to apply for Aid to Families with Dependent Children (AFDC) Toward for myself and my minor children. I was told I would receive a written communication notifying me of an appointment date to be scheduled in the future.
- 3. Sometime thereafter T received a card from the Manchester District Office notifying me that an appointment had been scheduled for me with a Ms. Scott on January 29, 1977.
- on January 29, 1974, I travelled to the Manchester District Office and took with me all information, including a children's birth certificates, that I had been requested to give to Ms. Scott. After supplying Ms. Scott with all requested information concerning my AFDC application I implied as to when I would receive notice that action had been to be on my application. Ms. Scott told me that despite depart would.

the Manchester District Office had received many AFDC amplitudes and since many individuals had applied before me, the welfare department would not be able to act on my applications within the thirty-day period.

- velfare assistance from the Town of Vernon. The Town of We has given me a voucher payment for my rent in the arount of \$173.00 and a food voucher in the amount of \$24.00 years.

 On a monthly basis I have received \$277.00 from the Town of Vernon.
- for AFDC benefits, Ms. Tearsall, the welfare director for the Town of Vernon, instructed me to seek legal assistance with regard to my AFDC application from the Tolland-Windham Legal Assistance Program, Inc., in Rockville, Connecticut which will did today.
- of my flat grant would be \$310.69, or \$33.69 more than I presently receive from the Town of Vernon. In addition, I been informed by my attorney that when found eligible for AFDC benefits I will simultaneously be eligible for food with and Title XIX (Medical Assistance) from the State of Connecticut.

8. My children and I are suffering great have for a the failure of the Manchester District Office to take a second on my AFDC application. At present my application has been district of my own, since January 9, 10 for a period of forty-one (41) days, and a a result my and I have been forced to subsist on voucler payments the Town of Vernon.

and the said the said

Fubscribed and sworn to before me, this 19th day of February, 1974.

James C. Sturdevant Commissioner of Superior Court

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STATE OF CONNECTICUT)
: ss.
WINDHAM COUNTY

Storrs, April 1, 1974

AFFIDAVIT

- I, THOMAS E. BURGESS, being duly sworn according to law, hereby depose and state:
- 1. I am a citizen of the United States and of the State of Connecticut and reside at 39 Maplewood Road, Jensen's Trailor Park, Storrs, Connecticut.
- 2. On March 6, 1974, I was involved in a motocycle accident in which I shattered the lower part of my right leg and ankle, suffered a cracked joint in my left elbow, bruised parts of both sides of my pelvis, lacerations on my left leg, and banged the shin bone just below the knee cap on the inside of my left leg. As a result of these injuries I am being treated by two physicians and will be unable to work for a minimum of three more months.
- 3. On March 26, 1974, I sought to apply for food stamps from the Connecticut State Welfare Department by telephoning the Red Cross building in Manchester, Connecticut. During the course of the telephone conversation with an employee of the Manchester District Office of the Welfare Department I was given an appointment for April 9, 1974, and was told to bring certain documentation with me. I was also informed that my

food stamp application would take a minimum of two weeks from the appointment date to be approved by the Manchester District Office and that additional delays would occur thereafter before I actually received an authorization card to purchase food stamps from the main office of the Connecticut State Welfare Department in Hartford.

4. I am presently receiving food vouchers from the Town of Mansfield in the amount of \$37.20 per month but I do not receive the "bonus" or an increase in purchasing power that is accorded all food stamp recipients under the Food Stamp Act.

In addition, I have been informed by Kevin J. Mahoney, Director of Social Services and Welfare Director of the Town of Mansfield that I will become absolutely liable by statute to reimburse the Town of Mansfield for any funds or vouchers given to me while my application for food stamps is pending.

THOMAS E. BURGESS GERZ

Subscribed and sworn to before me, this 1st day of April, 1974.

Jamos C. Sturdevant

Commissioner of Superior Court

STATE OF CONNECTICUT)
: ss.
WINDHAM COUNTY

Mansfield, April 1, 1974

AFFIDAVIT

- I, JAYNE V. PIERSON, being duly sworn according to law, hereby depose and state:
- I am a citizen of the United States and of the State of Connecticut residing at Apt. # 214 C, Foster Drive, Willimantic, Connecticut.
- 2. On January 11, 1974, I fell on the ice in the apartment complex where I reside rupturing a disc in my back. As a result of this injury I am presently unable to work. My fifteen year old daughter and I are presently subsisting on food vouchers from the Town of Mansfield.
- 3. On March 22, 1974, I sought to apply for food stamps from the Connecticut State Welfare Department by telephoning the Red Cross building in Manchester, Connecticut. During the course of the telephone conversation with a welfare employee I was given an appointment to go to the Red Cross building on April 9, 1974, but was not told to bring any documentation or information with me. I informed the welfare department employee that because of my back injury I was unable to drive to Manchester but I was not told that any transportation would be provided.

- 4. I have been informed by Kevin J. Mahoney, Director of Social Services and Welfare Director of the Town of Mansfield, that the Manchester District Office of the Connecticut State Welfare Department had not been processing food stamp applications within thirty days as required by law and that I was eligible for food stamps.
- 5. While my application for food stamps is pending my daughter and I will continue to subsist on food vouchers from the Town of Mansfield which do not afford the "bonus" given to recipients of food stamps.

JAYNE/V. PIERSON

Subscribe and sworn to before me, this 1st day of April, 1974.

James C. Sturdevant

Commissioner of the Superior Court

STATE OF CONNECTICUT)

.ss. Mansfield, April 1 , 1974

WINDHAM COUNTY)

AFFIDAVIT

- I, KEVIN MAHONEY, being duly sworn according to law, hereby depose and state:
- 1. I am a citizen of the United States and of the State of Connecticut residing at 345 Oakland Street, Apartment #39, Manchester, Connecticut.
- 2. I have been employed by the Town of Mansfield and have served in the capacity of Director of Social Services for the Town of Mansfield among other duties and responsibilities since August 28, 1973.
- 3. In my capacity as Director of Social Services for the Town of Mansfield I handle all areas of financial assistance for needy residents of the Town and also serve as the welfare director for the Town.
- 4. One governmental benefit program which affects the residents of Mansfield adversely is the Food Stamp Program operated by the Connecticut State Welfare Department. This is so because while the Norwich District Office is geographically closer to Mansfield, the Town of Mansfield is masside the jurisdiction of the Norwich District Office for the purposes

of state welfare benefits. As a result residents from

Mansfield are required to apply to either the Manchester

District Office which is located twenty miles from Mansfield

or the Hartford District Office, a distance of thirty miles

from Mansfield.

- 5. On October 23, 1973, I received a copy of a "News Release" issued by the Connecticut State Welfare Department and indicating the relocation of the Manchester Office of the Food Stamp Division to the Manchester Red Cross office (a copy of which is attached as Appendix A). According to the news release this relocation was prompted among other things by the "availability of transportation by the Red Cross for the elderly and disabled under certain conditions, and elimination of long waiting periods via use of appointment scheduling."
- 6. The news release further indicated that personnel from the Manchester District Office would interview applicants from seventeen communities only one day per week. Since receiving this document, however, I have learned through personal contact that only one welfare departmental employee is made available to process food stamp applications at the Manchester Red Cross building.
- 7. On October 22, 1973, I sent a letter to Mr. Cecil McCarthy, Food Stamp Director for the Connecticut State Welfare

Department, indicating the lack of adequate transportation available to residents of the Town of Mansfield who would like to apply for food stamps and the fact that the distance from Mansfield to Manchester of 20 miles and from Mansfield to Hartford of 30 miles presents very difficult obstacles to Mansfield applicants. I also suggested the assignment of additional personnel to the Hartford office for the purpose of visiting outlying areas such as Mansfield to increase the participation of the elderly in the food stamp program. (A copy of my letter is attached as Appendix B). To date I have received no response to this letter.

- 8. On January 28, 1974, I requested additional food stamp information booklets from the Food Stamp Unit of the Connecticut State Welfare Department for distribution to our residents (a copy of which is attached as Appendix C). To date I have received neither a response to my request nor the requested booklets.
- 9. On March 19, 1974, I again wrote to Cecil McCarthy suggesting the hardships imposed upon Mansfield residents by the lack of available transportation, the fact that the Manchester Red Cross building is only available one day per week to process applications for food stamps filed by residents from seventeen towns, and that after an individual first seeks to apply for food stamps at the Manchester District Office, he or she must wait for a period of from three to five weeks be-

fore an initial appointment is scheduled. I also stated that "after an appointment has been made, the applicant must wait an additional three to four weeks before the stamps are received. We understand that food stamps should be available within 30 days after the initial contact." (A copy of my letter is attached as Appendix D). To date I have received no reply to this letter.

- 10. All of my attempts to communicate the hardships suffered by Mansfield residents in attempting to apply for food stamps to personnel at the Connecticut State Welfare Department have been fruitless. The problems stated in my letters continue unabated to the present time.
 - 11. Despite the fact that the Town of Mansfield issues food vouchers to needy residents, these vouchers do not include the bonus as do food stamps. Hence a person receiving food vouchers incurs an absolute statutory liability to the town in the amount of the voucher whereas a person receiving food stamps is authorized to purchase a certain amount of food for substantially less than one not eligible for food stamps would be required to pay for the same amount of food.
 - 12. To my knowledge no eforts have been made by the Connecticut State Welfare Department to identify persons eligible to receive food stamps in rural Connecticut towns and to assist those persons in submitting applications. Apart from this deficiency, however, even those individuals who are aware of the benefits under the Food Stamp Act are hindered in their attempts

to receive them by the great distance from the Town of Mansfield to both the Manchester and Hartford District Offices, the lack of public transportation, and the length of time taken by the Welfare Department to process applications for food stamps which is invariably greater than the required 30-day period.

KEVIN J. MAHONEY

Subscribed and sworn to before me, this Ist day of April, 1974.

James C. Sturdevant

Commissioner of Superior Court

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

ANNIE TYSON, KAY DOWNER, ROBIN JACKSON, HERMAN BROWN, ETHEL C. WILLIAMS, SUSAN G. OTKA, FRANCIS L. JAMES, JR., THOMAS E. BURGESS, JAYNE V. PIERSON, and FERN L. CARVER, Individually and on behalf of all others similarly situated,

PLAINTIFFS,

V.

NICHOLAS NORTON, Individually and as Commissioner of the State of Connecticut Welfare Department, and

CECIL F. McCARTHY, Individually and as Director of the Food Stamp Program of the State of Connecticut Welfare Department,

DEFENDANTS.

CIVIL ACTION

NO. H-74/95

APRIL 22, 1974

AMENDED COMPLAINT

Now come plaintiffs by their attorneys and complain against defendants as follows:

PRELIMINARY STATEMENT

This is an action for declaratory and injunctive relief to protect plaintiffs' rights under the federal Food Stamp Act and regulations and instructions promulgated thereunder, and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. Relief is sought to enable the plaintiffs whose households are eligible for, applicants for, or recipients of food stamps and subject to hunger and malnutrition, to receive their food stamp entitlements promptly. Specifically by this action plaintiffs seek to enforce the federal requirements of action on food stamp applications within thirty days, including the actual receipt of Denefits within thirty days for those determined eligible, and adequate staff and facilities to complete said processing within the required time period. Plaintiffs additionally seek enforcement of the federal requirements of providing immediate authorization to purchase food stamps to federally-aided public assistance or general assistance recipients and to persons whose incomes are so low that they have no purclase requirement; the federal requirement of providing an outreach plan; the federal requirement of providing a variable purchase option to food stamp recipients; the federal requirement of providing continuing certification for a period of sixty days to recipients who move their households; the federal requirement of providing authorization to purchase food stamps prior to the next regular issuance for those recipients whose authorization cards are lost, rendered unusable, stolen, or not mailed through administrative error; and the federal requirement that eligible recipient households be granted their food stamp "bonus" from the date of application through the procedure of

forward adjustment.

JURISDICTION

- 1. Jurisdiction is conferred on this Court by 28 U.S.C. \$\$1343 (3) and (4), 1331, and 1337. The matter in controversy arises under an act of Congress regulating commerce and exceeds in value, exclusive of interest and costs, \$10,000.
- 2. The plaintiffs' action for declaratory and injunctive relief and for damages is authorized by 28 U.S.C. §§2201 and 2202 and by Rule 57 of the Federal Rules of Civil Procedure which relate to declaratory judgments, and by 42 U.S.C. §1983 which provides redress for the deprivation under color of state law of rights, privileges and immunities secured to all citizens and persons within the jurisdiction of the United States by the Constitution and laws of the United States.

PARTIES:

A. PLAINTIFFS

- 3. All plaintiffs are citizens of the United States, residents of the State of Connecticut, and whose households are eligible for food stamps in the State of Connecticut:
- a. Plaintiff ANNIE TYSON resides with her three children in Bridgeport, Connecticut.
- b. Plaintiff KAY DOWNER resides with her two-year old son in Westport, Connecticut.
- c. Plaintiff ROBIN JACKSON resides with her fourteen month-old son in South Norwalk, Connecticut.

- d. Plaintiff HERMAN BROWN resides with his wife and seven-year old son in Norwalk, Connecticut.
- e. Plaintiff ETHEL C. WILLIAMS resides with her three minor children in Rockville, Connecticut.
- f. Plaintiff SUSAN G. OTKA resides with her two minor children in Willington, Connecticut.
- g. Plaintiff FRANCIS L. JAMES, JR. resides with his minor son in Mansfield Center, Connecticut.
- h. Plaintiff THOMAS E. BURGESS resides at 39
 Maplewood Road in Storrs, Connecticut.
- i. Plaintiff JAYNE V. PIERSON resides with her minor daughter at Apartment #214C Foster Drive in Willimantic, Connecticut.
- j. Plaintiff FERN CARVER resides with her two minor children at 61 West Street, in Rockville, Connecticut.
- 4. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The members of the class are all those persons whose households are eligible forfood stamps in the State of Connecticut and:
- a. who were not informed of the availability and benefits of the food stamp program, and were not encouraged to participate or did not in fact participate, or had difficulty in participating in the food stamp program;
- b. who were not allowed to apply for food stamps at the time they initially contacted the Welfare Department

of their intent to apply for food stamps;

- c. whose incomes are so low that they have no purchase requirement and are therefore eligible to receive immediate authorization to purchase food stamps;
- d. who are federally-aided public assistance or general assistance recipients and who are therefore eligible to receive immediate authorization to purchase food stamps;
- e. whose applications for food stamps are not acted upon within thirty days from the date of application and, for those determined eligible, who do not receive their benefits within thirty days from the date of application;
- f. who are certified but do not receive their food stamp benefits from the date of application;
- g. whose authorization cards are lost, rendered unusable, stolen, or not mailed through administrative error and are therefore eligible to receive authorization to purchase food stamps prior to the next regular issuance;
- h. who requested or are neverthless elibible for an election to purchase a fraction of any monthly food stamp coupon allotment;
- i. who move their households and are therefore entitled to continuing certification for a period of sixty days:
- j. who have not received their food stamp bonuses to which they are entitled through the procedure of forward

adjustment.

This class is so numerous that joinder of all members is impracticable. There are questions of law or fact common to the class, and the claims of the named plaintiffs are typical of those of the class. The named plaintiffs will fairly and adequately protect the interests of the class. Defendants have acted or failed to act on grounds generally applicable to the class, thereby making appropriate declaratory and injunctive relief with respect to the class as a whole.

B. DEFENDANTS

- 5. Defendants are state officials charged with responsibility for the operation of the Food Stamp program in the State of Connecticut:
- a. Defendant NICHOLAS NORTON, Commissioner of Welfare for the State of Connecticut, is responsible for adopting and implementing the policy, rules and regulations of the Connecticut State Welfare Department (hereinafter "Welfare Department") with respect to the Food Stamp program.
- b. Defendant CECIL F. McCARTHY, Director of the Food Stamp program for the Welfare Department, is responsible for assuring statewide compliance with the policy, rules, and regulations of the Welfare Department with respect to the Food Stamp program.

FACTUAL ALLEGATIONS

6. Plaintiff TYSON:

- a. Her household's sole sources of support are Social Security benefits in the amount of \$219.00 per month and supplementary AFDC assistance in the amount of \$91.69 per month.
- b. On February 13, 1974, plaintiff TYSON went to the local office of the Welfare Department in Bridgeport, Connecticut, to apply for food stamps and AFDC assistance. She was instructed by the worker to return to the local office on February 27, 1974, although she was on February 13th, ready, willing, and able to complete her household's applications. Thereafter, her household received AFDC assistance but did not receive its first food stamp authorization until March 25, 1974, although as recipients of federally-aided public assistance all members of her household were entitled to an immediate authorization to purchase food stamps.
 - c. Although more than thirty days had passed between her household's application for food stamps on February 13, 1974, and March 25, 1974, the date on which it received its first food stamp authorization, plaintiff TYSON's household has not been given food stamp benefits from the date of application through the process of forward adjustment.

7. Plaintiff DOWNER:

a. She and her minor child are and for all times

pertinent to this action have been recipients of general assistance from the Town of Westport, Connecticut.

b. Plaintiff DOWNER on behalf of her household applied at the local office of the Welfare Department in South Norwalk, Connecticut, on February 13, 1974, for food stamps, and informed the worker that all members of her household were general assistance recipients. On February 13, 1974, she was not informed by the worker that her household was eligible for an immediate authorization to purchase food stamps, and in fact it did not receive one.

- c. In April, 1974, plaintiff DOWNER's attorneys were informed by defendant McCarthy that the Welfare Department had no record of her household's application for food stamps. As a result, she reapplied for food stamps on April 18, 1974, at the local office, and informed the worker that all members of her household were general assistance recipients, and requested and was denied by the worker an immediate authorization to purchase food stamps.
- d. Although more than thirty days have passed since the date of her household's initial application for food stamps on February 13, 1974, plaintiff DOWNER has received no notice whatsoever from the Welfare Department as to any actice taken on her household's application.
 - 8. Plaintiff JACKSON:

a. All members of her household were general assistance recipients from the Town of Norwell Connecticut, at the time of its applications for food stamps and AFDC assistance on January 16, 1974. At present plaintiff JACKSON and her minor child are AFDC recipients and receive as their sole source of support \$209.49 per month.

January 16, 1974, plaintiff JACKSON informed the worker at the local office of the Welfare Department that all members of her household were general assistance recipients, but she was not informed by the worker of her household's right to receive an immediate authorization to purchase food stamps and in fact her household received no food stamp benefits at that time.

- c. On April 1, 1974, plaintiff JACKSON's household received its first food stamp authorization and its first AFDC benefits but receipt of these benefits occurred long after thirty days had passed from the date of application.
- d. Plaintiff JACKSON's attorneys were informed by letter from defendant McCarthy, dated April 19, 1974 (a copy of which is attached as Exhibit A) that her household would receive its lost food stamp bonus covering the period from February 1, 1974, through March 31, 1974, but not from January 16, 1974, through March 31, 1974, to which it is entitled.
 - e. On April 1, 1974, plaintiff JACKSON moved her

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household's residence in South Norwalk, Connecticut, from 149 South Main Street to 23 1/2 Bouten Street. Her household did not receive an authorization to purchase food stamps on April 16, 1974, or thereafter, although it did receive its AFDC benefits at its new address on April 16, 1974.

9. Plaintiff BROWN:

- a. His household's only source of income during the past year has been his wife's occasional earnings of approximately \$62.00 per week.
- b. In late spring or early summer of 19"3, plaintiff BROWN applied on behalf of his household for food stamps at the South Norwalk office of the Welfare Department. In September, 1973, he received his household's first authorization to purchase food stamps which was rendered unusable because his household had no cash whatsoever with which to redeem the authorization. This monthly food stamp authorization was discontinued by the defendants in December, 1973, for his household's failure to redeem its previous authorizations.
- c. Plaintiff BROWN reapplied on January 22, 1974, for food stamps for his household. Although more than thirty days have passed his household has received no notice whatsoever of any action taken by the Welfare Department on its application for food stamps.

10. Plaintiff WILLIAMS:

a. On January 9, 1974, the date on which she applied

for food stamps and AFDC assistance on behalf of her household by telephoning the Manchester District office of the Welfare Department, all members of her household were general assistance recipients from the Town of Vernon, Connecticut. Although she informed the worker at the local office of this fact plaintiff WILLIAMS was not told of her household's right to receive an immediate authorization to purchase food stamps, and in fact it did not receive one. At present her household's only source of support is AFDC assistance in the amount of \$310.69 per month.

- b. On January 9, 1974, palintiff WILLIAMS was given an appointment for January 29, 1974, to travel to the local office of the Welfare Department to complete her household's applications, although she was on January 9th, ready, willing, and able to supply the worker with all the necessary information to complete her family's applications. On January 29, 1974, she travelled to the local office and supplied the worker with all the requested information.
- c. Plaintiff WILLIAMS' household received its first food stamp authorization on or about March 15, 1974, but because it did not receive its first AFDC check until April 4, 1974, the food stamp authorization was rendered unusable since plaintiff WILLIAMS' household had no cash with which to redeem the authorization, and the lost food stamp bonus has not been given to her household through the process of forward adjustment.

d. Although its food stamp application was not processed within thirty days, plaintiff WILLIAMS' household has not received its food stamp bonus through the process of forward adjustment from the date of application.

11. Plaintiff OTKA:

- a. On January 23, 1974, the date on which she applied for food stamps and AFDC assistance on behalf of her household by telephoning the Manchester District office of the Welfare Department, all members of her household were general assistance recipients from the Town of Willington, Connecticut. Although she informed the worker of this fact, plaintiff OTKA was not informed of her household's right to receive an immediate authorization to purchase food stamps, and in fact it did not receive one. At present her household's only source of support is AFDC assistance in the amount of 263.97 per month.
- b. After January 23, 1974, plaintiff OTKA received written notification from the local office of the Welfare Department that she had been given an appointment to complete her household's applications at the local office on March 4, 1974, although she was on January 23rd, ready, willing, and able to supply the worker with all the necessary information to complete her household's applications. Because of an administrative error made by the local office, plaintiff OTKA was not able to complete her household's applications for food stamps and AFDC aggistance until March 8, 1974.

12. Plaintiff JAMES:

- a. He and his minor son are and for all times pertinent to this action have been recipients of general assistance from the Town of Mansfield, Connecticut.
- b. Plaintiff JAMES on behalf of his household applied at the Norwich District office of the Welfare Department on March 14, 1974, for food stamps, and informed the worker that all members of his household were general assistance recipients. He was not informed by the worker that his household was eligible for an immediate authorization to purchase food stamps, and in fact it did not receive one.
- c. On March 25, 1974, plaintiff JAMES received a 'telephone call from a worker at the Norwich District office informing him that his household's application had been denied because the application had been filed with the wrong local office, but he was not informed of his household's right to request a fair hearing.
 - d. On March 26, 1974, plaintiff JAMES reapplied on behalf of his household for food stamps at the Manchester

District office of the Welfare Department and supplied the worker with all the requested information. On April 11, 1974, plaintiff JAMES' household received its first food stamp authorization, but it has not received its lost food stamp bonus from the date of its initial application on March 14, 1974, through the process of forward adjustment.

13. Plaintiff BURGESS:

- a. He is and for all times pertinent to this action has been a recipient of general assistance from the Town of Mansfield, Connecticut.
- b. On March 26, 1974, plaintiff BURGESS applied for food stamps by telephoning the Red Cross building in Manchester, Connecticut, which is used by the local office of the Welfare Department to process food stamp applications for non-assistance households who reside in seventeen communities. Although he informed the worker that he was a general assistance recipient, he was not informed of his right to receive an immediate authorization to purchase lood stamps, and in fact he did not receive one.
- c. During the telephone conversation with the worker on March 26, 1974, plaintiff BURGESS informed the worker that as a result of a motorcycle accident on March 6, 1974, he was on crutches and unable to drive his automobile any great distance. Plaintiff BURGESS was informed by the worker that he would have to supply his own transportation.

- d. Plaintiff BURGESS was given an appointment to travel to the local office on April 9, 1974, to complete his application for food stamps although on March 26th, he was ready and willing but for a lack of transportation to supply the worker with all the requested information.
- e. On April 9, 1974, plaintiff BURGESS was driven to the local office of the Welfare Department by Kevin J. Mahoney, Welfare Director for the Town of Mansfield, Connecticut, and supplied the worker with all the requested information.

 Although more than thirty days have passed since his application on March 26, 1974, he has received no notice whatsoever of any action taken by the Welfare Department on his household's application for food stamps.

14. Plaintiff PIERSON:

- a. She and her minor daughter are and for all times pertinent to this action have been recipients of general assistance from the Town of Mansfield, Connecticut.
- b. On March 22, 1974, plaintiff PIERSON on behalf of her household applied for food stamps by telephoning the Red Cross building in Manchester, Connecticut, which is used by the local office of the Welfare Department to process food stamp applications of non-assistance households in seventeen communities. Although she informed the worker that all members of her household were general assistance recipients, she was not informed of her household's right to receive an immediate authori-

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zation to purchase food stamps, and in fact it did not receive one.

- c. During the telephone conversation with the worker on March 22, 1974, plaintiff PIERSON informed the worker that as a result of a severe back injury suffered in a fall on January 9, 1974, she was unable to drive an automobile. Plaintiff PIERSON was informed by the worker, however, that she would have to supply her own transportation.
- d. Plaintiff PIERSON was given an appointment to travel to the local office on April 9, 1974, to complete her household's application for food stamps, although she was on March 22nd, ready and willing but for a lack of transportation to supply the worker with all the requested information.
- e. On April 9, 1974, plaintiff PIERSON was driven to the local office of the Welfare Department by Kevin J. Mahoney, Welfare Director for the Town of Mansfield, Connecticut, and supplied the worker with all the requested information. Although more than thirty days have passed since her household's application for food stamps on March 22, 1974, plaintiff PIERSON has received no notice whatsoever of any action taken by the Welfare Department on her household's application for food stamps.

15. Plaintiff CARVER:

a. On February 11, 1974, the date on which she applied for food stamps and AFDC assistance on behalf of her household

members of her household were general assistance recipients from the Town of Vernon, Connecticut. Although she informed the worker at the local office of this fact, plaintiff CARVER was not informed of her household's right to receive an immediate authorization to purchase food stamps, and in fact it did not receive one. At present her household's only source of support is AFDC assistance in the amount of 209.49 per month.

b. On April 1, 1974, plaintiff CARVER's household received its first food stamp authorization authorizing it to purchase \$56.00 worth of food stamps for \$13.50 for the ensuing two-week period. Because her household's monthly rent is \$150.00 and plaintiff CARVER's household received only \$157.12 in AFDC benefits on April 1, 1974, it had insufficient cash with which to redeem the food stamp authorization.

- c. In order to redeem its food stamp authorization plaintiff CARVER's household was forced to become indebted to friends who loaned her sufficient funds with which to redeem. the authorization. Plaintiff CARVER's household is desirous of and eligible to purchase a portion of its monthly coupon allotment, but the defendants have failed to inform her of her household's entitlement to a variable purchase authorization.
- d. Although more than thirty days elapsed between the date of plaintiff CARVER's household's application for food stamps and the date on which it received its first food stamp

authorization, plaintiff CARVER's household has not received its food stamp bonus through the process of forward adjustment from the date of application.

FIRST COUNT

- 16. Paragraphs 1 through 15 are hereby incorporated by reference the same as if fully pleaded.
- 17. The Food Stamp Act, 7 U.S.C. §2011, et seq., was enacted by Congress "to alleviate hunger and malnutrition" by establishing a food stamp program to permit "low-income house-holds to purchase a nutritionally adequate diet."
- denominations to be utilized as a medium of exchange for food in retail groceries. 7 U.S.C. §2015. Food stamps are purchased for cash by eligible households at amounts less than their face value, the charges being determined on the basis of family income. 7 U.S.C. §2016. The difference between the face value of the stamps and the purchase price is termed the "bonus" and the cost of the "bonus" is born entirely by the federal government. 7 U.S.C. §2013.
- 19. Connecticut has chosen to participate in the Food
 Stamp program, and State Statutes authorize the Welfare Department to administer the program here. Connecticut General
 Statutes, \$17-12a. That same statutory section as well as

regulations promulgated by the Welfare Department, Vol. I, Supp, B, F.S. - 110, recognize that by choosing to participate, the state must comply with the Federal Food Stamp Act, and regulations and instructions issued thereunder. 7 U.S.C. §2019, and 7 C.F.R. §§270.3 and 271.1, et seq.

- 20. Pursuant to 7U.S.C. §2013(c), the Secretary of Agriculture has promulgated regulations requiring the defendants to devise and implement an outreach plan to inform low-income households of the availability and benefits of the food stamp program and encourage their participation. 7 C.F.R. §271.1(k). Federal law also explicitly requires the provision of adequate staff and facilities to inform low-income households of the availability and benefits of the food stamp program and encourage their participation. 7 C.F.R. §271.1(h).
- 21. Defendants Norton and McCarthy have failed to devise and implement an outreach plan.
- of the availability and benefits of the food stamp program. They did not apply until advised to do so by the town welfare director of the Town of Mansfield, Connecticut. But for the provision of transportation by Kevin J. Mahoney, Welfare Director for the Town of Mansfield, Connecticut, plaintiffs BURGESS and PIERSON would not have been able to travel to the local office of the Welfare Department to apply for food stamps

because no public or private transportation was available to them, and defendants failed to provide transportation. Upon information and belief, there are numerous low-income households in the State of Connecticut which are not aware of the food stamp program.

- 23. By failing to devise and implement an adequate outreach plan defendants have denied, and continue to deny plaintiffs and members of the class they represent, their rights
 under the Food Stamp Act and the regulations and instruct as
 issued pursuant thereto, and therefore are in violation of the
 Supremacy Clause of the United States Constitution.
- 24. Plaintiffs and members of the class they represent have no adequate remedy at law, and have suffered and will continue to suffer irreparable injury as a result of defendants actions complained of herein.

SECOND COUNT

- 25. Paragraphs 1 through 19 are hereby incorporated by reference the same as if fully pleaded.
- 26. Pursuant to 7 U.S.C. §2013(c), the Secretary of the Department of Agriculture has promulgated regulations and instructions requiring the defendants to certify households in which all members are included in a federally-aided public assistance or general assistance grant, solely on the information

contained in an affidavit and the assistance case file, 7 C.F.R. §271.4(a)(1), and to certify all other households by completion of the application in an interview with the applicant by a telephone call. 7 C.F.R. §271.4(a)(2)(i) and (ii). Federal law also explicitly requires the provision of adequate staff and facilities so that applications may be processed promptly within thirty days. 7 C.F.R. §271.1(h); F.N.S. Instructions 732-1, §1(D).

- 27. Defendants Norton and McCarthy have failed to allow the households of plaintiffs TYSON, WILLIAMS, OTKA, BURGESS, and PIERSON to apply for food stamps on the date each sought to apply either by visiting or telephoning the local office of the Welfare Department. Upon information and belief, there are numerous applicants for food stamps in the State of Connecticut who are not allowed to complete their applications on the date they seek to apply for assistance.
- 28. Plaintiffs and members of the class they represent are entitled to file their applications on the date they seek to apply, but they have been prevented from doing so by the defendants' failure to provide adequate staff and facilities.
- 29. By failing to allow food stamp applicants to file their applications on the date they seek to apply for assistance as required by federal law, defendants have denied and continue to deny plaintiffs and members of the class they represent their

rights under the Food Stamp Act and the regulations and instructions issued pursuant thereto, and therefore are in violation of the Supremacy Clause of the United States Constitution.

30. Plaintiffs and members of the class they represent have no adequate remedy at law, and have suffered and will continue to suffer irreparable injury as a result of defendants actions complained of herein.

THIRD COUNT

- 31. Paragraphs 1 through 19 are hereby incorporated by reference the same as if fully pleaded.
- 32. Pursuant to 7 U.S.C. §2013(c), the Secretary of Agriculture has promulgated regulations requiring that certification be made for thirty (30) days without verification of eligibility factors with respect to households which report an income so low that they could not otherwise buy food and therefore qualify for food stamps with no purchase requirement and which appear, on the basis of other information furnished, to be eligible for participation in the food stamp program.

 7 C.F.R. §271.4(a)(2)(iii).
- 33. Defendants Norton and McCarthy have failed to grant immediate authorization to purchase food stamps to plaintiff BROWN and members of the plaintiff class who at the time of application for food stamps had incomes so low that they could not otherwise buy food and therefore qualify for food stamps

with no purchase requirement. Upon information and belief, there are numerous applicants for food stamps in the State of Connecticut whose incomes are so low that they have no purchase requirement but who have not been granted immediate authorization to purchase food stamps.

- 34. By failing to grant immediate authorization to purchase food stamps to those applicants whose incomes are so low that they could not otherwise buy food and therefore qualify, for food stamps with no purchase requirement as required by federal law, defendants have denied, and continue to deny plaintiffs and members of the class they represent, their rights under the Food Stamp Act and the regulations and instructions issued pursuant thereto, and therefore are in violation of the Supremacy Clause of the United States Constitution.
- 35. Plaintifis and members of the class they represent have no adequate remedy at law, and have 'suffered and will continue to suffer irreparable injury as a result of defendants' actions complained of herein.

FOURTH COUNT

- 36. Paragraphs 1 through 19 are hereby incorporated by reference the same as if fully pleaded.
- 37. Pursuant to 7 U.S.C. §2013(c), the Secretary of Agriculture has promulgated regulations requiring that households in which all members are included in a federally-aided

public assistance/general assistance grant shall be determined to be eligible to participate in the food stamp program while receiving such grants. 7 C.F.R. 5271.3(b).

- immediate authorization to purchase food stamps to plaintiffs TYSON, DOWNER, WILLIAMS, OTKA, JAMES, BURGESS, PIERSON, and CARVER, and members of their class, the members of whose households were all recipients of federally-aided public assistance or general assistance at the time of or during the pendency of their applications for food stamps. Upon information and belief there are numerous applicants for food stamps in the State of Connecticut who are federally-aided public assistance or general assistance recipients, but who were not given immediate authorization to purchase food stamps.
- chase food stamps to federally-aided public assistance or general assistance recipients as required by federal law, defendants have denied, and continue to deny plaintiffs, and members of the class they represent their rights under the Food Stamp Act and the regulations and instructions issued pursuant thereto, and therefore are in violation of the Supremacy Clause of the United States Constitution.
- 40. Plaintiffs and members of the class they represent have no adequate remedy at law, and have suffered and will

continue to suffer irreparable injury as a result of defendants! actions complained of herein.

FIFTH COUNT

- 41. Paragraphs 1 through 19 are hereby incorporated by reference the same as if fully pleaded.
- Agriculture has promulgated regulations and instructions requiring that action be taken on food stamps applications within thirty days from the date of application. 7 C.F.R. §271. 1(a)(3); F.N.S. Instructions 732-1. Federal law also explicitly requires the provision of adequate staff and facilities to process applications within thirty days. 7 C.F.R. §271.1(h).
- the applications of plaintiffs TYSON, DOWNER, JACKSON, BROWN, WILLIAMS, OTKA, BURGESS, PIERSON, and CARVER within thirty days from the date of their applications. Upon information and belief, there produces applications for food stamps pending in the State of Connecticut at the present time which have been pending longer than thirty days.
 - 44. Plaintiffs and members of the class they represent are entitled to have their applications processed within thirty days from the date of application, but they have not had their applications acted upon within the required time period.

- 45. By failing to follow the "thirty-day" requirement of federal law, defendants have denied, and continue to deny plaintiffs and members of the class they represent their rights under the Food Stamp Act and the regulations and instructions issued pursuant thereto, and therefore are in violation of the Supremacy Clause of the United States Constitution.
- 46. Plaintiffs and members of the class they represent have no adequate remedy at law, and have suffered and will continue to suffer irreparable injury as a result of defendants actions complained of herein.

SIXTH COUNT

- 47. Paragraphs 1 through 19 are hereby incorporated by reference the same as if fully pleaded.
- Agriculture has promulgated regulations and instructions requiring that in cases where authorizations to purchase food stamps are lost, rendered unusable, stolen, or not mailed through administrative error, the defendants must provide a means whereby the affected household can participate in the food stamp program prior to the next regular issuance date.

 F.N.S. Instructions 734-2(VI)(C).
 - 49. Defendants Norton and McCarthy have failed to provide a means whereby eligible households whose authorizations to

purchase food stamps have been lost, rendered unusable, stolen, or not mailed through administrative error can participate in the food stamp program in the State of Connecticut prior to the next regular issuance date.

- the last two weeks of March, 1974, was rendered unusable by non-receipt of her AFDC check was denied the means to participate in the food stamp program in the State of Connecticut prior to the next regular issuance date, April 1, 1974. Upon information and belief there are numerous food stamp households in the State of Connecticut whose authorizations to purchase food stamps have been lost, rendered unusable, stolen or not mailed through administrative error and who as a result have been unable to participate in the food stamp program prior to the next regular issuance date.
- 51. By failing to provide a means whereby any eligible household whose authorization to purchase food stamps has been lost, rendered unusable, stolen, or not mailed through administrative error can participate in the food stamp program in the State of Connecticut prior to the next regular issuance date, as required by federal law, defendants have denied and continue to deny plaintiffs and members of the class they represent their rights under the Food Stamp Act and the regulations and instructions issued pursuant thereto, and therefore are in

violation of the Supremacy Clause of the United States Constitution.

52. Plaintiffs and members of the class they represent have no adequate remedy at law, and have suffered and will continue to suffer irreparable injury as a result of defendants actions complained of herein.

SEVENTH COUNT

- 53. Paragraphs 1 through 19 are hereby incorporated by reference the same as if fully pleaded.
 - 54. Pursuant to 7 U.S.C. §2013(c), the Secretary of the Department of Agriculture has promulgated regulations requiring the defendants to permit any eligible household to elect to purchase a fraction of any monthly food stamp allotment.

 7 C.F.R. §271.6(d)(3).
 - 55. Defendants Norton and McCarthy have failed to promulgate and implement policy authorizing any eligible household to elect to purchase a fraction of any monthly food stamp.

 allotment.
 - 56. Plaintiff CARVER and members of the plaintiff class are eligible and desire to purchase a fraction of their monthly food stamp allotment. Upon information and belief, there are numerous recipients of food stamps in the State of Connecticut who are eligible and desire to purchase a fraction of their

monthly food stamp allotment.

- 57. By failing to promulgate and implement policy authorizing any eligible household to elect to purchase a fraction of any monthly food stamp allotment as required by federal law, defendants have denied, and continue to deny plaintiffs and members of the class they represent their rights under the Food Stamp Act and the regulations and instructions issued pursuant thereto, and therefore are in violation of the Supremacy Clause of the United States Constitution.
- 58. Plaintiffs and members of the class they represent have no adequate remedy at law, and have suffered and will continue to suffer irreparable injury as a result of defendants actions complained of herein.

EIGHTH COUNT

- 59. Paragraphs 1 through 19 are hereby incorporated by reference the same as if fully pleaded.
- Department of Agriculture has promulgated regulations requiring the defendants to continue the certification for sixty days after its move of any eligible household which moves its residence. 7 C.F.R. §271.4(a)(6).
- 61. Defendants Norton and McCarthy have failed to continue the certification for sixty days after its move of plaintiff JACKSON's household which moved its residence. Upon

information and belief there are numerous food stamp households in the State of Connecticut whose sertifications are terminated at the time of moving their residences.

- days after their moves of households which move their residences, as required by federal law, defendants have denied, and continue to deny plaintiffs and members of the class they represent their rights under the Food Stamp Act and the regulations and instructions issued pursuant thereto, and therefore are in violation of the Supremacy Clause of the United States Constitution.
- 63. Plaintiffs and members of the class they represent have no adequate remedy at law, and have suffered and will continue to suffer irreparable injury as a result of defendants' actions complained of herein.

NINTH COUNT

- 64. Paragraphs 1 through 22, 26 through 28, 32 through 33, 37 through 38, 42 through 44, 48 through 50, 54 through 56, and 60 through 61 are hereby incorporated by reference the same as if fully pleaded.
- 65. Defendants have denied and continue to deny plaintiffs and the members of the class they represent their rights under the Equal Protection Clause of the Fourteenth Amendment to the

United States Constitution:

- a. by fairing to devise and implement an outreach plan;
- b. by failing to allow all applicants to apply for food stamps at the time they initially contact the Welfare Department of their intent to apply for food stamps;
- c. by failing to provide immediate authorizations to purchase food stamps to households whose incomes are so low that they could not otherwise buy food and who therefore qualify for food stamps with no purchase requirement;
- d. by failing to render immediate authorizations to purchase food stamps to households of which all members are recipients of federally-aided public assistance or general assistance;
- e. by failing to process all applications within thirty days from the date of application;
- f. by failing to provide food stamps to all certified households from the date of application;
- households whose authorizations to purchase food stamps are lost, rendered unusable, stolen, or not mailed through administration error can participate in the food stamp program prior to the next regular issuance date;
 - h. by failing to permit certified households to

elect to purchase fractions of any monthly food stamp allotment;

- i. by failing to continue their certifications for sixty days of households who move their residences; and
- j. by failing to award to all certified households all lost food stamp bonuses to which they are entitled through the process of forward adjustment.
- 66. Plaintiffs and members of the class they represent have no adequate remedy at law and have suffered and will continue to suffer irreparable injury as a result of defendants actions complained of herein.

TENTH COUNT

- 67. Paragraphs 1 through 22, 26 through 26, 32 through 33, 37 through 38, 42 through 44, 48 through 50, 54 through 56, and 60 through 61 are hereby incorporated by reference the same as if fully pleaded.
- and the members of the class they represent their rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution by administering the food stamp program in the State of Connecticut in an arbitrary and capricious manner:
 - a. by failing to devise and implement an outreach

plan;

- b. by failing to allow all applicants to apply for food stamps at the time they initially contact the Welfare Department of their intent to apply for food stamps;
 - c. by failing to provide immediate authorizations to purchase food stamps to households whose incomes are so low that they could not otherwise buy food and who therefore qualify for food stamps with no purchase requirement;
 - d. by failing to render immediate authorizations to purchase food stamps to households of which all members are recipients of federally-aided public assistance or general assistance;
 - e. by failing to process all applications within thirty days from the date of application;
 - f. by failing to provide food stamps to all certified households from the date of application;
- g. by failing to provide a means whereby certified households whose authorizations to purchase food stamps are lost rendered unusable, stolen, or not mailed through administration error can participate in the food stamp program prior to the next regular issuance date;
 - h. by failing to permit certified households to elect to purchase fractions of any monthly food stamp allotment;

- i. by failing to continue their certifications for sixty days of households who move their residences; and
- j. by failing to award to all certified households all lost food stamp bonuses to which they are entitled through the process of forward adjustment.
- 69. Plaintiffs and members of the class they represent have no adequate remedy at law and have suffered and will continue to suffer irreparable injury as a result of defendants actions complained of herein.

PRAYER FOR RELIEF

WHEREFORE plaintiffs, individually and on behalf of all other similarly situated, pray that this Court:

- 1. Assume jurisdiction of this case and set this case down for a prompt hearing:
- 2. Certify, pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure that this action shall be maintained as a class action;
- 3. Enter a declaratory judgment pursuant to 28 U.S.C. \$2201, declaring that the actions of the defendants Norton and McCarthy in the following respects conflict with the Food Stamp Act and regulations and instructions issued thereunder, and are therefore invalid under the Supremacy Clause of the United States Constitution:
 - a. the defendants' failure to implement the federal

requirement of providing an outreach plan;

b. .the defendants' failure to enforce the federal requirement of allowing all applicants to apply for food stamps at the time they initially contact the Welfare Department of their intent to apply for food stamps;

- c. the defendants' failure to enforce the federal requirement of providing immediate authorizations to purchase food stamps to households whose incomes are so low that they could not otherwise buy food and therefore qualify for food stamps with no purchase requirement.
- d. the defendants' failure to enforce the federal requirement of providing immediate authorizations to purchase food stamps to households all the members of which are recipients of federally-aided public assistance or general assistance;
- e. the defendants' failure to enforce the federal requirement that food stamp applications be processed within thirty days from the date of application;
- requirement of providing authorization to purchase food stamps prior to the next regular issuance to those recipient households whose authorization cards are lost, rendered unusable, stolen, or not mailed through administrative error;
- g. the defendants' failure to enforce the federal requirement of providing a variable purchase option to food

stamp recipients; and

- h. the defendants' failure to implement the federal requirement of providing continuing certification for a period of sixty days to recipients who move their households.
- 4. Enter a declaratory judgment pursuant to 28 U.S.C. §2201, declaring that the actions of the defendants Norton and McCarthy in the following respects are unconstitutional and violate the rights of the plaintiffs and of the plaintiffs' class under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution:
- a. the defendants' failure to devise and implement an outreach plan;
- b. the defendants' failure to allow all applicants to apply for food stamps at the time they initially contact the Welfare Department of their intent to apply for food stamps;
- c. the defendants' failure to provide immediate authorizations to purchase food stamps to households whose incomes are so low that they could not otherwise buy food and therefore qualify for food stamps with no purchase requirement;
- d. the defendants' failure to provide immediate authorizations to purchase food stamps to households all the members of which are recipients of federally-aided public assistance or general assistance;
 - e. the defendants' failure to process all food stamp

applications within thirty days from the date of application and to presume as eligible on the thirtieth day after application all applicants whose food stamp applications are not acted upon within thirty days;

- f. the defendants' failure to grant food stamps from the date of application through the process of forward adjustment to all certified households;
- g. the defendants' failure to provide authorizations to purchase food stamps prior to the next regular issuance to those recipient households whose authorization cards are lost, rendered unusable, stolen, or not mailed through administrative error;
- h. the defendants' failure to provide a variable purchase option to food stamp recipients;
- i. the defendants' failure to provide continuing certification for a period of sixty days to recipients who move their households; and
- j. the defendants' failure to grant to all certified households their food stamp bonuses to which they are entitled through the process of forward adjustment.
- 5. Issue preliminary and permanent injunctions enjoining defendants Norton and McCarthy, their successors in office, agents, and employees:
 - a. from failing to devise and implement an outreach

plan;

- b. from failing to allow all applicants to apply for food stamps at the time they initially contact the Welfare Department of their intent to apply for food stamps;
- c. from failing to provide immediate authorizations to purchase food stamps to households whose incomes are so low that they could not otherwise buy food and therefore qualify for food stamps with no purchase requirement;
- d. from failing to provide immediate authorizations to purchase food stamps to households all the members of which are recipients of federally-aided public assistance or general assistance;
- e. from failing to process all food stamp applications within thirty days from the date of application and from failing to presume as eligible on the thirtieth day after application all applicants whose food stamp applications are not acted upon within thirty days;
- f. from failing to grant food stamps from the date of application through the process of forward adjustment to all certified households;
 - g. from failing to provide authorizations to purchase food stamps prior to the next regular issuance to those recipient households whose authorization cards are lost, rendered unusable, stolen, or not mailed through administrative error;

h. from failing to provide a variable purchase option to food stamp recipients;

ii. from failing to provide continuing certification for a period of sixty days to recipients who move their households; and

j. from failing to grant to all certified households their food stamp bonuses to which they are entitled through the process of forward adjustment.

6. Allow plaintiffs their costs herein and reasonable attorneys' fees, and also grant them and all other persons similarly situated such additional or alternative relief as may seem to this Court just, proper, and equitable.

Respectfully submitted,

James C. Sturdevant

Tolland-Windham Legal Assistance, Inc.

35 Village Street

P.O. Box 358

Rockville, Connecticut 06066

203-872-0553

Charles A. Pirro, III Fairfield County Legal Services, Inc. 33 South Main Street Norwalk, Connecticut 06854 203-853-3070

Marilyn Kaplan Katz Ira Horowitz Fairfield County Legal Services, Inc. 412 East Main Street Bridgeport, Connecticut 06608 203-366-4955

Attorneys for Plaintiffs

STATE OF CONNECTICUT

SS.

Mansfield, June 25, 1974.

AFFIDAVIT OF KEVIN MAHONEY

- I, KEVIN MAHONEY, being duly sworn according to law, hereby depose and state:
- 1. I am a citizen of the United States and of the State of Connecticut residing at 35 Oakland Street, Apartment #39, Manchester, Connecticut.
- 2. I am employed by the Town of Mansfield and have served in the capacity of Director of Social Services for the Town of Mansfield among other duties and responsibilities since August 28, 1973.
- 3. On April 1, 1974, I signed an affidavit which I have been informed by Attorney James C. Sturdevant was file with the Court in Tyson, et al. v. Norton, et al., Civil No. H-74-05 (D.Conn., Mar. 22, 1974).
- 4. On April 29, 1974, I was present in the courtroom and was fully prepared to testify in behalf of the plainthis in the above-entitled action. On that date, however, no hearing was held on plaintiffs' Motion for a Preliminary Injunction.

- 5. I have been contacted again by Attorney Sturdevant to testify in the above-entitled action at 2:00 p.m. on June 25, 1974. I am unable to appear on that date and at that time because I must testify at a hearing concerning charges made against members of the Board of Directors of the Willimantic Senior Citizens Center. Because that hearing has already been postponed once, I feel in good conscience that I must be present today.
- of the Food Stamp Program of the State of Connecticut Welfare
 Department come to the Town of Mansfield to take food stamp
 applications of residents of Mansfield and surrounding towns
 which is detailed in my previous affidavit, dated April 1, 1974,
 I finally received a letter, dated May 8, 1974, from John holmes,
 the food stamp supervisor in the Hartford District Office of the
 Welfare Department requesting space in Mansfield (a copy of which
 is attached as Appendix A).
- 7. On May 14, 1974, I sent a letter to Mr. Holmes
 (a copy of which is attached as Appendix B) agreeing to his
 proposal that one worker be present to take non-public assistance
 household food stamp applications from 9:45 a.m. until 12:00
 noon every Thursday.

- 8. In accordance with telephone conversations with Mr. Holmes between May 8 and May 14, 1974, it was my understanding that this procedure was to commence in Mansfield on May 23, 1974. In these telephone conversations, I agreed on benalf of the Town of Mansfield to provide adequate space for interviewing, and to make the appointments for applicant households. It was further agreed that the Connecticut State Welfare Department would handle the publicity.
- 9. On or about May 27, 1974, Mr. Holmes and David
 Tuttle, a non-public assistance food stamp worker for the
 Hartford District Office, came to the Town of Mansfield to view
 our office. I was not present because I received no advance
 notice of the visit. On that date they informed my secretary
 that the taking of applications in Mansfield would not begin
 until June 6, 1974, but no reasons were given for this delay.
- Connecticut State Welfare Department as had been agreed, on May 29, 1974, I sent news releases (a copy of which is attached as Appendix C) to the Hartford Courant, the Willimantic Chronicle, the Journal Inquirer, the Hartford Times, the Broadcaster, the University of Connecticut newspaper, and the first selectmen of the towns of Mansfield, Willington, Union, Ellington, Tolland, Vernon, Coventry, Columbia, and Rockville. I also sent copies to five public health nursing agencies, Tolland-Windham Legal Assistance, Inc., the Red Cross in Manchester, WILI Radio, and the Employment Security office in Willimantic.

- 12. On May 30, 1974, I telephoned Mr. Holmes in Hartford and told him that the response to the news release had been overwhelming and requested that food stamp applications be taken in Mansfield at least one full day each week. My request was denied.
- 13. On June 5, 1974, I met with Connecticut State
 Representative Audrey Beck and asked her to intercede in order
 that we have one worker from the Welfare Department present for at
 least one full day each week.
- 14. By June 13, 1974, I was scheduling appointments a full month in advance or for July 13, 1974. Because of this month long delay, I was urging all persons who wished to apply for food stamps and who were not disabled, elderly, or bedridden to try to go to either the Hartford District Office or the Red Cross Building in Manchester to apply for food stamps.

- requested that a worker come to Mansfield on some other day during that week. On June 17, 18, and 19, 1974, I received phone calls from both Mr. Holmes and his assistant informing me that no worker would come to Mansfield during the week of July 4, 1974. By June 17, 1974, I was scheduling appointments for July 18, 1974, and continue to refer people to the Maraford District Office.
- 16. To date I have had no success in my negotiations with employees of the State of Connecticut Welfare Department in having more workers sent to Mansfield to take food stamp applications, or in having one worker come more often than one half-day per week.
- Mansfield and who are eligible for the variable purchase option.

 I have been told, however, that no such option is yet available in the State of Connecticut. Because these households respective receive AFDC benefits for an assistance unit size two and SSI benefits, and because their monthly rent and utilities are high, they require the variable purchase option in the food stamp program in order to have enough money to handle other needs.
- ation of Local Administrators of General Assistance (CALAGA) for one year and for the past two weeks have been a member of its Executive Committee, and a member of the Standards Committee.

- 19. Through my association with CALAGA and my many conversations with other town welfare directors who are members of CALAGA, I am aware that all general assistance programs in the State of Connecticut are administered by officials of the town under the State Welfare Department's mandatory standard of need. This mandatory standard of need is the flat grant award which varies with the size of the family. In my experience and based upon my knowledge of how other towns administer town assistance, no town exceeds this standard of need because it will not be reimbursed by the State Welfare Department for assistance rendered if more than the flat grant level of benefits is given to a recipient.
 - 20. Also I am aware that many towns who provide covin assistance do not give cash payments to their recipients, but rather distribute vouchers, the value of which in most cases is substantially less than the flat grant monthly award.

Kevin Manoney

Subscribed and sworn to before me this 25th day of June, 1974.

ioner of the Superior Cour

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

ANNIE TYSON, ET AL

Plaintiffs

Vs.

) Civil Action No.

NICIOLAS NORTON, ET AL

Derendants

AFFIDAVIT

- I, SUSIE JOHNSON, being duly sworn, depose and say:
- 1. reside at Headow Gardens, (Bldy. 1, Apt. 16), South Norwalk, Connecticut.
- 2. I am a recipient of food stamps from the Connecticut Welfare Department.
- 3. Prior to about December, 1971, I had received food stamps on the first (1st), and fifteenth (15th), of each month. On such occasion I had paid \$52.00 for \$72.00 worth of food stamps.
- 4. On or around October, 1971, I was informed by phone that I had to come in for a personal interview since I was a mixed household. At that time I told them that I could not get down to the office because of knee trouble. They said I should get down there somehow. I asked if they would pay for a taxi

but they refused and I couldn't afford one myself and therefore I did not go.

- 5. I did not receive food stamps on or about December, 1971, nor did I receive any food stamps at all during the next twelve months.
- 6. During that year I tried calling up the Welfare office at least every month and either the line was always busy or else they would put me on hold and never get back to me, often cutting me off. Finally, after about nine months, I got through and they told me that I could take care of it at the South Morwalk Community Center. I then called the Community Center and they told me I would have to take care of it at the Bridgeport office.

 Around the beginning of November, 1972, I went to Bridgeport and was told I could have taken care of the matter at the South Norwalk Community Center.
- 7. Beginning about December 1, 1972, I received authorization to purchase \$97.00 worth of food stamps for \$34.50.
- 8. Beginning about March 1, 1973, I received food stamps for an altered rate; I paid \$39.50 for \$97.00 worth of food. There was no explanation for the change which has been in effect since then.

- 9. I believe that I am entitled to a forward adjustment to compensate for my lost bonus for the 12 month period beginning around December 1, 1971 and ending around December 1, 1972.
- 10. I have not received a forward adjustment of my food stamps.

SUSIE JOHNSON

Subscribed and sworn to before me this 3 day of

1974.

Commissioner of the Superior Court

UNITED STATES DISTRICT COURT DISTRICT OF CONNECTICUT

ANNIE TYSON, ET AL	
PLAINTIFFS	
v.	CIVIL ACTION NO. H-74-95
NICHOLAS NORTON, ET AL	July 5, 1974
DEFENDANTS	}

STATE OF CONNECTICUT)
:SS
TOLLAND COUNTY)

Tolland, July 5, 1974

AFFIDAVIT

- I, FERN CARVER, being first duly sworn according to law hereby depose and state:
 - 1. I am a plaintiff in the above-entitled action.
- 2. Prior to June 1, 1974, I resided with my two minor children in the town of Vernon, Connecticut. Since that time we have resided in the Town of Tolland, Connecticut.
- 3. On or about May 15, 1974, I telephoned the Manchester subdistrict office of the Connecticut State Welfare Department and notified the worker who answered my call that my children and I were moving our residence to Tolland, Connecticut. I was assured that the Welfare Department would mail my AFDC award checks and my authorization cards to purchase food

stamps to my new address.

- 4. On June 1, 1974, I happened to be at my house-hold's old apartment in Vernon to finish cleaning the apartment when the postman arrived with my AFDC check and food stamp ATP. Because these were to have been mailed to my household's new address I telephoned the Manchester subdistrict office on June 3, 1974. I was informed that my assistance file showed no record that I had notified a worker on May 15, 1974, of the change of address.
- 5. I thereafter learned from Emily Olsen, a worker at the local welfare office that a record had indeed been made by the worker but that the notation had been placed in her desk and had never been sent to the central office of the Welfare Department.
- 6. On June 16, 1974, I received neither my AFDC award check nor my household's authorization to purchase food stamps. I immediately called Emily Olsen at the local welfare office and informed her that I had not received my ATP or my AFDC check. She informed me that she would put a tracer on these items and call me back. She called me back shortly and said that my AFDC check had been mailed to my old address and that I could travel to Hartford to pick up the check.
- 7. On June 18, 1974, I travelled to the central office of the Welfare Department in Hartford. While I was allowed

to pick up my AFDC check, they refused to give me my household's food stamp ATP.

- 8. I did not receive my semi-monthly food stamp ATP until June 23, 1974.
- 9. On July 1, 1974, I received neither my AFDC check nor my food stamp ATP. On July 2, 1974, I received my family's semi-monthly AFDC check but not our food stamp ATP. I immediately called Emily Olsen at the local welfare office who informed me that the ATP had probably been mailed to my household's former address in Vernon but that she would put a tracer on it.
- 10. To date I have not received my July 1, 1974 semimonthly food stamp ATP. Even if I did receive it now I have
 no money left from my semi-monthly AFDC check to cash the
 food stamp authorization, since I have been forced to purchase
 food for cash with no bonus.
- 11. As I have alledged in both the Amended Complaint and in my affidavit in support of my Motion to Intervene in the above-entitled action my monthly rental payments are so high that I am unable to cash my food stamp ATP on the first of each month. To date I have never been informed that I could receive the variable purchase option.
- 12. I have been informed by attorney James C. Sturdevant of Tolland-Windham Legal Assistance, Inc., that the Welfare

Department planned to implement the variable purchase option on July 1, 1974, but that if I elected to participate I would have to travel at least once and probably twice per month to the Manchester subdistrict office to indicate my election and that my only option would be to purchase 25% of my present authorization.

- 13. I am without private transportation and would be unable to travel to the local office of the Welfare Department on any regular basis.
- 14. Also I desire to purchase more than 25% of each of my semi-monthly food stamp authorizations which my attorneys have informed me I have a right to under federal requirements.
- 15. I feel that ever since I sought to apply for food stamps I have been harrassed and humiliated. I have only irregularly received food stamp authorizations which, because of the amount of my family's flat grant AFDC award and our high rent I am unable to afford without borrowing from friends.
- 16. I have also received a letter, from Mrs. J. Frazier, a worker at the local office, dated June 28, 1974, informing me that since all members of my household are not AFDC recipients, my food stamp certification will be discontinued on July 31, 1974, unless I apply for non-public assistance food stamps by travelling to Hartford.
 - 17. All members of my household have never been AFDC

recipients and the Welfare Department knew this when my house-hold was certified to participate in the food stamp program. Because they have in their possession all information concerning my household's size, income, and expenses because of my redetermination interview on June 28, 1974, I feel that the proposed action is being taken only to harass me and to discourage my family from participating in the food stamp program.

Jan Cander.

FERN CARVER

Subscribed and sworn to before me this 5th day of July, 1974.

James C. Sturdevant

Commissioner of the Superior Court

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

ANNIE TYSON, et al

Plaintiffs

VS.

) Civil Action No. H-74-95

NICHOLAS NORTON, et al

Defendants

AFFIDAVIT

- I, BARBARA MOSLEY, being duly sworn, depose and say:
- 1. I reside at 3 Monroe Street, South Norwalk, Connecticut.
- 2. I am a recipient of food stamps from the Connecticut
 .
 Welfare Department.
- 3. Prior to December, 1972, I had received food stamps on the first (1st) and fifteenth (15th), of each month. On each such occasion, I had paid \$46.00 for \$66.00 worth of food stamps.
- 4. On December 16, 1972, my food stamp benefits were inexplicably discontinued. Having no transportation to Bridge-port, I, tried to resolve this situation over the phone. About every week for six months I called up trying to find out what was going on and to get my authorization card sent. Every time I called I got a different person who didn't know what I was talking about. They would usually say they would look into it and that I should call back a week later.

- 5. I did not receive food stamps from December 16, 1972, through July 16, 1973, when my benefits were resumed.
- 6. After July 16, 1973, I paid \$42.00 for \$66.00 worth of food stamps, until approximately 3 months ago when new rates were instituted due to changes in the federal regulations. I now pay \$30.00 for \$84.00 worth of food stamps.
- 7. I believe that I am entitled to a forward adjustment to compensate for my lost bonus for the period beginning December 16, 1972 and ending July 16, 1973.
- 8. I have not received a forward adjustment of my food stamps.

Barbara Mosley
BARBARA MOSLEY

Subscribed and sworn to before me this

day of 2

1974.

Commissioner of the Superior Court

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

ANNIE TYSON, et al

v.

Plaintiffs

)Civil Action No. H-74-95

NICHOLAS NORTON, et al

Defendants

AFFIDAVIT

- I, BARBARA BRITTO, being duly sworn, depose and say:
- 1. I reside at 45 Hales Ct., Westport, Connecticut.
- 2. I am a recipient of food stamps from the Connecticut Welfare Department.
- 3. Prior to November 1, 1972, for about one year I had received food stamps on the first (1st) and fifteenth (15th) of each month. On each such occasion, I had paid \$32.50 for \$56.00 worth of food stamps.
- 4. I did not receive any food stamps at all in November, 1972, nor did I receive any food stamps in the first half of December, 1972. I received food stamps on December 15, 1972, but I did not receive food stamps for the first half of January, 1973.
- 5. After numerous phone calls and repeated reassurances, I was informed that the reason I was no longer receiving stamps was because my file card had slipped out of the computer at the welfare office.
 - 6. Beginning on January 15, 1973, I received food stamps

again, regularly at a new rate; I paid \$32.50 for \$56.00 worth. of food. In March 1974 my rate was again changed; I paid \$23.50 for \$71.00 worth of food.

- 7. I believe that I am entitled to a forward adjustment to compensate for my lost bonus for the entire month of November 1972, the first half of December 1973, and the first half of January 1974.
- 8. I have not received a forward adjustment of my food stamps.

Subscribed and sworn to before me this & 2 day of 21, 1974.

Commissioner of the Superior Court

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

ANNIE TYSON, et al

V.

Plaintiffs

)Civil 40 ion No. H-71+-95

NICHOLAS NORTON, et al

Defendants

AFFIDAVIT

- I, MINNIE JOHNSON, being duly sworn, depose and say:
- 1. I reside at 1042 S. Main St. North k, Connecticut.
- 2. I am a recipient of food stamps from the Connecticut Velfare Department.
 - 3. Prior to February, 1974, for about three years I had received food stamps on the first (1st) and fifteenth (15th) of each month. On each such occasion, I had paid \$16.50 for \$56.00 werth of food stamps.
 - 4. On May 1, 1974, my welfare check and my food stamp authorization card were stolen. I called Bridgeport quite a few times about this, but they only told me to wait. I received my authorization card on May 16, 1974, but received no welfare benefits.until thirty days after my check was stolen. During this

time, I shopped with what little I had from my wages. Nobcdy informed me at this time that I could get my food stamps for nothing during this interval. No one informed me that my food stamp authorization card could be replaced. Accordingly, I received no food stamps.

- 5. I believe that I am entitled to a forward adjustment to compensate for my lost bonus for the entire month of May 1974.
- 6. I have not received a forward adjustment of my food stamps.

MINNIE JOHNSON

Subscribed and sworn to before me this the day of 24 / 1974.

Commissioner of the Superior Court

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ANNIE TYSON, et al.,

:

Plaintiff

CIVIL NO. H-74-95

NICHOLAS NORTON, et al

Defendants

BRIEF AMICUS CURIAE

Comes now the United States of America by and through

Peter C. Dorsey, United States Attorney, and files this brief

<u>Amicus curiae</u> in the above-captioned case.

PRELIMINARY STATEMENT

This case involves the construction of the Food Stamp

Act of 1964, as amended, 7 U.S.C. 2011-2026, and administrative

regulations issued pursuant to the Act which appear at 7 CFR

270-274. The Act authorizes the administration of the Food

Stamp Program by the Secretary of Agriculture of the United

States who has designated the Food and Nutrition Service (FNS)

of the Department of Agriculture (the Department) to administer

the program. The United States wishes to present to the Court,

as amicus curiae, its views regarding the legal interpretation

of the Act and regulations as they relate to the issues raised

in this case.

This brief is intended to assist the Court by pointing out statutory and regulatory provisions which relate directly to issues raised by plaintiffs' complaint and motion for preliminary injunction. The Department has issued Food Stamp Program Regulations (the regulations), 7 CFR 270-274, and instructions to State agencies which prescribe procedures to be followed with regard to certain program functions. It should be noted that each State agency agrees by its required plan of operation to administer the program in conformance with the regulations and all

instructions which are issued by FNS. See, 7 CFR 271.8(c)(1). For this reason, action taken by the Court in this case with respect to the defendants may have a direct impact in the ability of the State agency to perform these obligations.

DISCUSSION

Plaintiffs first seek to require that the State agency devise and implement an adequate outreach plan. The statutory provisions relating to this issue are subsections 10(e) and (f) of the Act, 7 U.S.C. 2019(e) and (f). These provisions read in pertinent part as follows:

- (e) The State agency of each State desiring to participate in the food stamp program shall submit for approval a plan of operation specifying the manner in which such program will be conducted within the State, the political subdivisions within the State in which the State desires to conduct the pro am, and the effective date of participation by each such political subdivision. In addition, each plan o. operation shall provide among other provisions as may by regulation be required, the following: . . . (3) That the State agency shall undertake effective action, including the use of services provided by other federally funded agencies and organizations, to inform low-income households concerning the availability and benefits of the food stamp program and insure the participation of eligible households:
- (f) If the Secretary determines that in the administration of the program there is a failure by a State agency to comply substantially with the provisions of this Act, or with the regulations issued pursuant to this Act, or with the State plan of operation, he shall inform such State agency of such failure and shall allow the State agency a reasonable period of time for the correction of such failure. Upon the expiration of such period, the Secretary shall direct that there be no further issuance of coupons in the political subdivisions where such failure has occurred until such time as satisfactory corrective action has been taken.

Pursuant to these statutory provisions, FNS issued regulations (7 CFR 271.1) p.oviding, in part:

(k) Outreach. Each State agency shall take effective action pursuant to an approved outreach plan, using State agency personnel and the services provided by

federally funded and other agencies and organizations to inform low-income households, with due regard to ethenic groups, of the availability and benefits of the program and encourage the participation of eligible households.

(f) Implementation. (1) Each State agency shall:

(iii) Submit an outreach plan to FNS within eighty days of the effective date of the regulations in this subchapter: . . .

In addition, FNS issued FNS (FS) Instructions 732-6 (copy attached as Exhibit A) which provides guidelines to State agencies regarding the requirements of a proper outreach program.

The Connecticut State agency submitted its outreach plan in 1973.

On November 13, 1973, the plan, having been reviewed and found to meet all statutory and regulatory requirements, was approved by FNS. All subsequent plans and reports relating to outreach which have been submitted by the State agency as required by FNS (FS) 732-6 have likewise been reviewed and approved.

Beyond requiring that State agencies submit plans and reports indicating the outreach steps which are being taken and assuring that those steps are in compliance with the prescribed standards, no authority exists for the Department to undertake program functions assigned to the States. The Food Stamp Act provides that the State agency of each participating State "shall assume responsibility for certification of applicants, and for issuance of coupons." 7 U.S.C. 2019(b).

The next issue raised by the plaintiffs in their pleadings relates to allowing applicants to apply for food stamps at the time they initially contact program personnel with the intent to apply. The steps required to be taken by the State agency in the certification of households are set out at 7 CFR 271.4(a) through 271.4(a)(iii). Basically the process

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is commenced with the filing by the applicant of a completed Application for Participation and includes an interview with the applicant and independent verification of his income. It is clear that the State agency cannot begin the certification process until it has received a completed application containing all the information upon which eligibility is determined. In practice, many potential applicants do not have all the information required by the application and personnel are not always immediately available at the time the application is requested; in these circumstances application forms are provided and applicants are scheduled for an interview at a later date, at which time their applications are filed.

The regulation which requires an interview (7 CFR 271.4(a)(2)(ii)) also provides that FNS may waive the requirement where quality control demonstrates the effectiveness of the certification system. It should be noted, however, that no state has requested release from the interview requirement and, to date, quality control statistics have not indicated a level of effectiveness which would encourage FNS to grant such a request.

Plaintiffs contend in this case that the State agency should provide immediate authorization to purchase food stamps to households whose incomes are so low that they could not otherwise buy food and who therefore qualify for food stamps with no purchase requirement. Present program regulations and instructions provide for such "zero purchase" procedures under prescribed circumstances. The regulations provide that State agencies may certify households for thirty days without verification of eligibility where income is so low as to indicate to purchase requirement if, on the basis of other information provided, it appears that the applicant is eligible. 7 CFR 271.4(a)(2)(iii). Under this procedure,

the household may be certified immediately for a period of thirty days pending verification of eligibility. Similarly, where a household has been certified and is in immediate need, emergency issuance of an authorization to purchase card <u>must</u> be provided by the State agency. See subsection VI(c), FNS Instruction 734-2, Rev. 1, copy attached as exhibit B.

Plaintiffs likewise contend that provisions should be made whereby certified households whose authorization to purchase food stamps are lost, rendered unusable, stolen or not mailed through administrative error can participate in the program prior to the next regular issuance date. The "emergency issuance" procedures described above are also applicable under these circumstances and should also be made available by the State agency.

Plaintiffs also contend that immediate authorization should be provided to households of which all members are recipients of federally-aided public assistance or general assistance. Certification of these types of households is provided for under 7 CFR 271.4(a)(1) which calls for certification solely on the basis of information contained in an affidavit and the assistance case file. The reasoning behind this provision is that where the applicant has met the eligibility requirements of other programs which are the same or substantially similar to those of the Food Stamp Program, there is no need for additional verification of eligibility. This requirement is met with regard to all federally-aided public assistance programs and many State general assistance program. In order to assure that specific general assistance program standards are substantially similar to Food Stamp Program criteria, FNS has set out standards of comparison which must be used by the States in determining whether general assistance program recipients may be treated

as public assistance recipients under the above-cited provision. FNS

(FS) Instruction 732-5 (copy attached as Exhibit C). Where State agencies wish to treat general assistance households as public assistance households rather than non-assistance households, they are required to show that the standards of comparison are met. In the case of Connecticut, the State agency indicated to FNS that general assistance programs carried on within the State did not meet these standards and that, therefore, general assistance households would be treated as non-assistance households for certification purposes.

In any event, public assistance households are not provided immediate certification under 7 CFR 271.4(a)(1). Such households are considered to be automatically eligible for the program only as to the factors of income and resources. With respect to other eligibility factors, and to numerous other program determinations (for example, the level of income for determination of purchase requirements) such households must be certified in the same manner as non-public assistance households.

Likewise, affidavits must be provided and any inconsistent items verified. Thus, in terms of immediacy of certification, public assistance households are treated the same as non-assistance households, and in neither case is immediate certification provided.

Plaintiffs contend that all applications for participation should be processed and authorization to purchase cards mailed to those households whose eligibility has been established within thirty days of application. In fact, FNS regulations require that a determination as to eligibility, and notification of such determination, be accomplished within thirty days of receipt of the application. 7 CFR 271.4(a)(3). This does not include the mailing of authorization to purchase (ATP) cards. FNS recognizes the need for orderly processing of large volumes of ATP

cards, much of which is done through regularly scheduled computer mailing procedures, and believes that where the card is mailed at the soonest possible scheduled mailing date after certification, the basic requirements of the program are met. It should be noted, however, that the abovementioned emergency issuance procedures should be made available by the State agency when prescribed emergency circumstances exist.

Plaintiffs further contend that all applicants whose applications are not acted upon within thirty days should be presumed eligible and that food stamps should be provided to all certified households from the date of application. It is the Department's position that applicants are not eligible for food stamps until such eligibility is determined and that State agencies should have a reasonable time, not to exceed thirty days, within which to make that determination. Thus, households which are determined to be eligible should be provided with ATP cards at the soonest possible scheduled mailing date after certification for the month in which the mailing is made. In instances where State agencies fail to complete certification within thirty days, and where this fact is shown, benefits through forward adjustment of purchase requirements should be provided retroactively to the time when certification should have been completed.

Plaintiffs contend that applicants should be permitted to purchase fractions of their monthly food stamp allotment. The Food Stamp Act itself requires that variable purchases be permitted (7 U.S.C. 2016(b)), and State agencies should comply with this requirement.

Plaintiffs' contend that the certification of households which move their residences should be continued for sixty days. Program regulations require such a continuation (7 CFR 271.4(a)(6)), and once again all State agencies should comply with the requirement.

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Finally, plaintiffs' contend that retroactive benefits should be made available through forward adjustments of purchase requirements to ail households whose applications were wrongfully delayed. Pursuant to recent court decisions holding that retroactive benefits should be made available to households where it is established that benefits were in fact wrongfully lost (see Bermudez v. U.S. Department of Agriculture, F.2d D.C. Cir., 1973), cert. denied, 42 L.W. 3348 (1973)), FNS has instructed all State agencies to make such benefits available. Under the cited authority, the method of making retroactive benefits available is through a system of forward adjustments of purchase requirements, but the requirement is only that such benefits be made available where the household establishes through a fair hearing its entitlement to them. In order to relieve households of the necessity of a fair hearing where loss of benefits is obvious, FNS has instructed all State agencies that where an agency conference determines that retroactive benefits should be made available, and the fair hearing authority concurs, they may be made available without actual attendance at a hearing. It is believed that in most instances of lost benefits caused by delayed certification this simplified procedure can be used.

CONCLUSION

The foregoing is a statement of statutory and regulatory requirements of the Food Stamp Program which are believed to be relevant to the issues in litigation. As pointed out above, the Department of Agriculture has no authority to undertake program functions which are delegated to State agencies by Congress. The effectiveness with which the State

agency is meeting the cited program requirements is a proper matter for the Court's consideration.

PETER C. DORSEY United States Attorney

HENRY S. COHN Assistant U. S. Attorney

UNITED STATES DISTRICT COURT DISTRICT OF CONNECTICUT

ANNIE TYSON, ET AL

PLAINTIFFS

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CIVIL ACTION NO. H-74-95

NICHOLAS NORTON, ET AL
DEFENDANTS

ANSWER TO AMENDED COMPLAINT

I.

- 1. Paragraph 5 of plaintiffs' amended complaint is admitted.
- 2. Paragraphs 1, 2, 4, 17, 18, 19, 20, 26, 32, 37, 42, 48, 54, and 60 set forth conclusions of law and not allegations of fact and therefore no answer is necessary; but, insofar as an answer may be required, defendants deny each and every allegation of fact and conclusion of law that may be contained therein.
- 3. Paragraphs 21, 24, 30, 35, 40, 46, 49, 52, 55, 58, 61, 63, 65, 66, 68 and 69 are denied.
- 4. Defendants are without sufficient information and knowledge with which to determine the truth of the allegations contained in paragraphs 3 and 56.

- 5. Insofar as paragraphs 6, 7, 10, 11, 12, 13, 14 and 15 allege that more than thirty days elapsed between the date of application for food stamps, of the respective plaintiffs mentioned therein, and the date upon which they received their first food stamp authorization to purchase card, the allegations contained in said paragraphs are denied; as to the other factual allegations in said paragraphs, defendants are without sufficient information and knowledge with which to determine the truth of the allegations contained therein; as to the conclusions of law set forth in said paragraphs, no answer is required; but insofar as an answer may be required, defendants deny each and every other allegation of fact and conclusion of law that may be contained therein.
- 6. Insofar as paragraphs 8 and 9 allege that the food stamp applications of the plaintiffs, Jackson and Brown, were not processed within thirty days from the date of application, it is admitted; as to the other factual allegations in said paragraphs, defendants are without sufficient information and knowledge with which to determine the truth of the allegations contained therein; as to the conclusions of law set forth in said paragraphs, no answer is required; but insofar as an answer may be required, defendants deny each and every other allegation of fact and conclusion of law that may be contained therein.

- 7. Insofar as paragraph 22 alleges that the defendants failed to provide transportation to enable the food stamp applicants mentioned therein to travel to the local office of the Welfare Department to apply for food stamps it is admitted; as to the other factual allegations contained in said paragraph, defendants are without sufficient information and knowledge with which to determine the truth of the allegations contained therein.
- 8. Insofar as paragraph 23 alleges that defendants have failed to devise and implement an adequate outreach plan, the allegations of said paragraph are denied; as to any conclusion(s) of law contained in said paragraph, no answer is necessary; but insofar as an answer may be required, defendants deny each and every other allegation of fact and conclusion of law that may be contained therein.
- 9. Insofar as paragraph 27 alleges that defendants have failed to allow food stamp applicant households to apply for food stamps on the date that such applicants have appeared at the local office of the welfare department, signifying their intention to so apply, it is denied; defendant is without sufficient information with which to determine the truth of the other factual allegations contained therein; as to any conclusions of law contained in said paragraph, no answer is necessary;

but insofar as an answer may be required, defendants deny each and every other allegation of fact and conclusion of law that may be contained therein.

- 10. Insofar as paragraph 28 alleges that defendants have prevented plaintiffs from filing food stamp applications on the date they seek to apply, said allegations are denied.
- 11. Insofar as paragraph 29 alleges that defendants have failed to allow food stamp applicants to apply for food stamps on the date they seek to apply, the allegations contained therein are denied; as to any conclusions of law contained in said paragraph, no answer is necessary; but insofar as an answer may be required, defendants deny each and every other allegation of fact and conclusion of law that may be contained therein.
- 12. As to the factual allegations concerning the financial condition of the plaintiff mentioned in paragraph 33, at the time he applied for food stamps, defendants are without sufficient information and knowledge with which to determine the truth thereof; as to any conclusions of law contained in said paragraph, no answer is necessary; but insofar as an answer may be required, defendants deny each and every other allegation of fact and conclusion of law that may be contained therein.
- 13. Insofar as paragraph 34 alleges that defendants have failed immediately to grant authorization to purchase cards to applicant food stamp households who appear, on the basis of the

information furnished by the applicant households, to have no purchase requirement, it is admitted; as to any conclusions of law set forth in said paragraph, no answer is necessary; but insofar as an answer may be required, defendants deny each and every other allegation of fact and conclusion of law that may be contained therein.

- 14. Insofar as paragraph 38 alleges that the plaintiffs mentioned therein were recipients of public assistance at the time they applied for food stamps, the allegations contained therein are denied; insofar as said paragraph alleges that defendants did not grant immediate authorization to purchase food stamps to plain tiffs mentioned therein it is admitted; defendants are without sufficient information and knowledge with which to determine the truth of other allegations contained in said paragraph.
- 15. Insofar as paragraph 39 alleges that defendants have failed immediately to grant authorization to purchase cards to applicant food stamp households, all the members of which are receiving public assistance, the allegations contained in said paragraph are denied; insofar as said paragraph alleges that defendants have failed immediately to grant authorization to purchase cards to applicant food stamp households, all the member of which are receiving general assistance, the allegations of said paragraph are admitted; as to conclusions of law set forth in said paragraph, no answer is necessary; but insofar as an answer may be required, defendants deny each and every other allegation of fact and conclusion of law that may be contained therein.

- 16. Insofar as paragraph 43 alleges that the food stamp applications of plaintiffs Jackson and Brown were not processed within thirty days, said allegations are admitted; insofar as said paragraph alleges that any other food stamp applications were not processed by defendants within thirty days, the allegations contained therein are denied.
- 17. Insofar as paragraph 44 alleges that defendants have failed to process food stamp applications within thirty days, the allegations contained in said paragraph are denied.
- 18. Insofar as paragraph 45 alleges that defendants have failed to process food stamp applications within thirty days, the allegations contained in said paragraph are denied; as to any conclusions of law set forth in said paragraph, no answer is necessary; but insofar as an answer may be required, defendants deny each and every other allegation of fact and conclusion of law that may be contained therein.
- 19. Insofar as paragraph 50 alleges that food stamp house-holds in Connecticut have been unable to participate in the food stamp program because authorizations to purchase food stamps have been lost, rendered unusable, stolen, or not mailed through administrative error, the allegations contained in said paragraph are denied; otherwise, defendants are without sufficient information and knowledge with which to determine

the truth of the allegations contained therein.

- 20. Insofar as paragraph 51 alleges that defendants have failed to provide a means whereby food stamp households whose authorization to purchase cards have been lost, stolen, rendered unusable, or not mailed as a result of administrative error can participate in the food stamp program prior to the next regular issuance date, the allegations contained in said paragraph are denied; as to conclusions of law set forth in said paragraph no answer is necessary; but insofar as an answer may be required, defendants deny each and every allegation of fact and conclusion of law that may be contained therein.
- 21. Insofar as paragraph 57 alleges that defendants have failed to implement a procedure by which food stamp households may elect to purchase a fractional part of the monthly food stamp allotment, the allegations contained in said paragraph are denied; as to any conclusions of law set forth in said paragraph, no answer is necessary; but insofar as an answer may be required, defendants deny each and every allegation of fact and conclusion of law that may be contained therein.
- 22. Insofar as paragraph 62 alleges that defendants have failed to continue certification of food stamp households which move, the allegations of said paragraph are denied; as to conclusions of law set forth in said paragraph, no answer is necessary; but insofar as an answer may be required defendants deny

each and every allegation of fact and conclusion of law that may be contained therein.

All allegations not expressly hereinbefore admitted, denied or modified are denied.

- II. Defendant Respectfully Submits The Following By Way Of Affirmative Defense.
- 1. The complaint fails to state a claim upon which relief may be granted.

THE DEFENDANTS,

BY THEIR ATTORNEY

ROBERT K. KILLIAN ATTORNEY GENERAL

BY

EDMUND C. WALSH ASSISTANT ATTORNEY GENERAL

90 Brainard Road Hartford, Connecticut 06114 Tel.: 566-7014 FOOD AL NUTRITION SERVICE

NORTHEAST REGION
720 ALEXANDER ROAD
PRINCETON, NJ 08540

10V-5 1974

Mr. Cacil F. McCarthy, Director Food Stamp Program State Department of Welfare 110 Bartholemew Avenue Martford, Connecticut 06106

Dear Mr. McCarthy:

This will confirm the telephone conversation between Irving Strobing and yourself on October 25, 1974 concerning Section 2122 of FNS (FS) Instruction 732-1.

With regard to your question about the necessity of interviews, there are presently no plans to abolish the provision requiring that all NA and SSI applicants be interviewed to establish eligiblity for food stamp assistance.

In relation to determining what is sufficient justification for applicant inability to be interviewed in the office, there are no ground rules governing what is sufficient and what is not. Each case must be considered separately and judged by the individual circumstances.

We hope this will ensuer your questions concerning the MA interview requirement.

Very truly yours,

. Pagional Director

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Food Stamp Program

Appendix "M"

FILED

FIB 24 10 00 AM '75 UNITED STATES DISTRICT COURT U.S. DISTRICT OF CONNECTIONAL

ANNIE TYSON, ET AL

CIVIL NO. H-74-95

NICHOLAS MORTON, Individually and as Commissioner of the State of Connecticut Welfare Department, ET AL

MEMORANDUM OF DECISION

This case is a multi-pronged attack upon the administration of the Food Stamp program in the state of Connecticut At stake is the very ability of thousands of low-income households in this state to obtain for themselves the means for affording a nutritiously adequate diet. As both the cost of food and the rate of unemployment climb during the depression we are suffering in this normally prosperous state, it must be apparent that the need for an effective, efficient and humanely operated food stamp program is becoming ever more imperative. Plaintiffs challenge the effectiveness of the program as currently administered, contending that in a variety of ways the defendants are violating both the letter and spirit of the Food Stamp Act, 7 U.S.C. §§ 2011-2025 (1970), and the regulations and instructions promulgated thereunder by the Food and Nutrition Service (FNS) of the Department of Agriculture, the federal agency charged with overseeing the operation of the food stamp programs in the various states.

After listening to three days of testimony and examining numerous briefs, affidavits, deposition transcripts and exhibits submitted by the parties, this court has become convinced that there are serious deficiencies in the manner in which the state is operating its food stamp program.

While there are often external factors beyond the control of any government agency which may account for inadequate administration of a program, the inadequacy in this case seems to be explainable in terms of foot-dragging efforts somewhat more noticeable than a simple lack of enthusiasm. By so limiting its efforts, the defendants have acted in derogation of the purpose of the Food Stamp Act, best articulated in the congressional declaration of policy at 7 U.S.C. § 2011 (1970):

"It is hereby declared to be the policy of Congress, in order to promote the general welfare, that the Nation's abundance of food should be utilized cooperatively by the States, the Federal Government, local governmental units, and other agencies to safeguard the health and well-being of the Nation's population and raise levels of nutrition among low-income households. The Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. The Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of our agricultural abundances and will strengthen our agricultural economy, as well as result in more orderly marketing and distribution of food. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to purchase a nutritionally adequate diet through normal channels of trade."

The Food Stamp Act was passed in 1964 and was designed to operate in a relatively simple manner in order to insure that all needy households would receive food stamps. At the national level the program is administered by the Food and Nutrition Service of the Department of Agriculture. It is charged, inter alia, with establishing national eligibility standards, including income and work requirements. 7 U.S.C. § 2014(b), (c), (d) (1970). It is worth noting that states have a choice as to whether they will participate in the food stamp program. But once the decision to participate is made, a state is bound to follow the requirements of 7 U.S.C. § 2019 (1970) which provides, inter alia, that the state is charged with the responsibility of certifying eligible households. Moreover, the state, pursuant to 7 U.S.C. § 2019(e), must submit a plan of operation to the FNS for its approval. The financial burden imposed upon the state is almost de minimis. Not only does the federal government pay for 100% of the benefits received by the participants, it will also reimburse the state for 50% of the cost of administering the program. Food Stamp Reg. § 271.2, 40 Fed. Reg. 1887 (1975). Connecticut has elected to participate in the food stamp program and thus has subjected itself to the requirements of the federal statute and regulations in operating its program.

The scheme itself is simple. Eligible households may purchase stamps at less than their face value. The number of stamps which they are entitled to purchase and the amount

which they must pay for them is determined on the basis of nationally established standards. The amount which they must pay is called the "purchase requirement." Food Stamp Reg. § 270.1(qq), 40 Fed. Reg. 1883 (1975). The difference between the face value of the stamps and the "purchase requirement" is referred to as the "bonus." In many states, including Connecticut, the participating households are not issued food stamps directly by the issuing agency (in Connecticut, the Department of Welfare, see Conn. Gen. Stat. Ann. § 17-12a (Supp. 1974)). Rather, they are given an Authorization to Purchase (ATP) card which states on its face the amount that the household is entitled to purchase and the "purchase requirement." The participating householder then takes the card to a bank and buys the food stamps. These stamps are acceptable at their face value at participating food stores and, in some cases, participating dining facilities.

Plaintiffs in this case are a number of food stamp eligible Connecticut citizens who have experienced a variety of difficulties in either making their initial application or during the course of their participation in the food stamp program. Their complaint raises several issues on behalf of themselves and the classes which they seek to represent in this action: (1) the state has failed to meet its obligation to "undertake effective action . . . to inform low-income households concerning the availability and benefits of the food stamp program and insure the participation of cligible

households." 7 U.S.C. § 2019(e)(5) (1970); (2) the state has failed to allow applicants to apply for food stamps when they first express a desire to apply and has imposed great burdens upon applicants by refusing to conduct telephone interviews and only providing home interviews under rare circumstances; (3) the state fails to process applications within the 30-day period required by law; (4) the state has failed to grant automatic forward adjustments for those persons whose applications are not processed within 30 days; (5) the state has failed to provide immediate emergency authorizations to applicants with zero purchase requirement; (6) the state has failed to provide immediate certifications for households on general assistance; (7) the state has failed to provide ATP cards prior to the next issuance date for those households whose ATP cards are either lost, stolen, rendered unusable or not mailed through administrative error; (8) the state has failed to implement a variable purchase option plan that conforms to federal standards; (9) the state has failed to implement a program to provide for 60-day continued certification for those persons who move within the state; and (10) the state is violating the plaintiffs' rights to equal protection of the law by refusing to provide benefits from the date of application, rather than the date on which an application is approved.

Preliminary Matters

There are several preliminary matters which must be considered before proceeding to the merits. First, although the defendants have not challenged the jurisdiction of this court, the plaintiffs have extensively briefed the issue and argued that any one of a number of bases exist for jurisdiction. It is not necessary to discuss the issue in detail, because 28 U.S.C. § 1337 (1970) provides a jurisdictional basis for this action.

That provision grants original jurisdiction to the district courts "of any civil action or proceeding arising under any Act of Congress regulating commerce" As one of the articulated purposes of the Food Stamp Act is to "strengthen our agricultural economy, as well as [to] result in more orderly marketing and distribution of food," 7 U.S.C. § 2011 (1970), it is clear that this action arises out of an Act of Congress which regulates commerce. Lidie v. State of California, 478 F.2d 552 (9th Cir. 1973); Bennett v. Butz,

_____ F. Supp. ____ (D. Minn, Oct. 11, 1974); Gignv v. Affleck, 370 F. Supp. 154, 157 (D. R.I. 1974); Moreno v. U.S. Dept. of Agriculture, 345 F. Supp. 310, 312-313 (D. D.C. 1972), aff'd, 413 U.S. 528 (1973).

Second, the plaintiffs seek class certification of this action pursuant to Fed.R.Civ.P. 23. Their proposed definition of the class is set out in the margin. $\frac{1}{}$ More accurately,

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[&]quot;The members of the class are all those persons whose households are eligible for food stamps

they seek certification of a series of classes, each composed of all those who are aggrieved by the various policies of the

1/ cont'd

in the State of Connecticut and;

- a. who were not informed of the availability and benefits of the food stamp program, and were not encouraged to participate or did not in fact participate, or had difficulty in participating in the food stamp program;
- b. who were not allowed to apply for food stamps at the time they initially contacted the Welfare Department of their intent to apply for food stamps;
- c. whose incomes are so low that they have no purchase requirement and are therefore eligible to receive immediate authorization to purchase food stamps;
- d. who are federally-aided public assistance or general assistance recipients and who are therefore eligible to receive immediate authorization to purchase food stamps;
- e. whose applications for food stamps are not acted upon within thirty days from the date of application and, for those determined eligible, who do not receive their benefits within thirty days from the date of application;
- f. who are certified but do not receive their food stamp benefits from the date of application;
- g. whose authorization cards are lost, rendered unusable, stolen, or not mailed through administrative error and are therefore eligible to receive authorization to purchase food stamps prior to the next regular issuance;
- h. who requested or are nevertheless eligible for an election to purchase a fraction of any monthly food stamp coupon allotment;

[Footnote continued on following page.]

defendants which are under attack in this action. The requirements of Rule 23(a) and (b)(2) have been satisfied in all but one instance. That exception involves a challenge to the alleged failure of the defendants to implement a 60-day continuing certification plan for those participating households who move within the state. For reasons that will be fully discussed infra, none of the named plaintiffs has standing to raise that issue and therefore there is no class representative. With regard to all other claims, the classes are hereby certified as defined by the plaintiffs.

Finally, it is necessary to note the current procedural status of this litigation. The case was originally heard on the plaintiffs' motion for a preliminary injunction. However, it became apparent that the plaintiffs were not seeking a restraining order to preserve the status quo pendente lite, but rather were asking this court for mandatory injunctive relief which would require substantial changes in the administration of the food stamp program. That form of relief is

^{1/} cont'd

who move their households and are therefore entitled to continuing certification for a period of sixty days;

j. who have not received their food stamp boruses to which they are entitled through the procedure of forward adjustment." Plaintiffs' Complaint § 4.

^{2/} See note 5, infra.

not appropriate at a preliminary stage of the proceedings.

See King v. Saddleback Junior College District, 425 F.2d 426

(9th Cir. 1970), cert. denied, 404 U.S. 979 (1971); Unicon

Management Corp. v. Koppers Co., 366 F.2d 199 (2d Cir. 1966);

Valentine v. Indianapolis-Marion County Building Authority,

355 F. Supp. 1240 (S.D. Ind. 1973); United States v. Feature

Sports, Inc., 348 F. Supp. 966 (S.D. N.Y. 1969). Accordingly,

the parties were given an opportunity to supplement the

record with additional affidavits and documentation and agreed

to permit this matter to go forward to a decision on the

merits.

The "Full Participation" Program

Title 7, U.S.C. § 2019(e)(5), a part of the 1971 amendments to the Food Stamp Act, see Act of January 11, 1971,
Pub. L. No. 91-671, § 6(b), 84 Stat. 2048, introduced a brand

new concept into the food stamp program. Beyond just making food stamps available, Congress required the states to take active steps to insure that the availability of this benefit ripened into realization for all eligible households. This "full participation" amendment provides "that the State agency shall undertake effective action, including the use of services provided by other federally funded agencies and organizations, to inform low-income households concerning the availability and benefits of the food stamp program and insure the participation of eligible households." 7 U.S.C. § 2019(e)(5)

(comphasis added). The plaintiffs maintain that the defendants have failed to satisfy this statutory mandate and look to this court for an order directing the defendants to expand and intensify their "full participation" efforts.

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Before considering the evidentiary underpinnings of this challenge, it is necessary at the outset to define the scope of a state's responsibility under 7 U.S.C. § 2019(e)(5). All parties are in agreement that, at a minimum, the statute requires effective action to <u>inform</u> low-income households of the availability of food stamp benefits. The plaintiffs, however, seeking to breathe some content into the statutory clause--"and insure the participation of eligible house-holds"--, argue that the defendants must also take steps to minimize the application burden upon those already informed

of the availability of food stamps. Burdensome application requirements, they argue, are inconsistent with the goal of insuring full participation. The defendants just as firmly maintain that the statute only requires efforts to inform persons of the program's existence. 3/

The May 30, 1974 deposition of defendant Cecil McCarthy, director of the state food stamp program, contains the following colloquy:

[&]quot;Q. Isn't it correct that that federal regulation 271.1 sub-paragraph k requires that the state shall take effective action to do two things: one, to inform low income households of the availability and benefits of the program; and two, to encourage their participation?

[&]quot;A. Yes.

[&]quot;Q. Is there, then, a difference between informing' low income households and 'encouraging' the participation of low income households?

[&]quot;A. No, what difference . . . well you inform them. Here it is, you know, come and see us. The worst we can say is no, so . . .

[&]quot;Q. Is that not simply informing them?

[&]quot;A. Informing them and encouraging them.

[&]quot;Q. What steps are specifically taken to encourage participation? Are not those activities you described which you previously described just for the purpose of informing people?

[&]quot;A. No, informing them and encouraging them to . . . participate in the program.

[&]quot;Q. How does merely telling people about the availability of the program encourage their participation?

[&]quot;A. Well the same way in which you tell people about your product in boosts of selling

The defendants' watered down interpretation of the statutory mandate is supported by regulations and instructions issued by the FNS. Those regulations interpret this section of the statute, which FNS has called "outreach," as requiring only,

"Any communicative effort performed cooperatively or singularly by Federal, State, or local agencies and organizations, or by individuals, to inform low-income households of the availability and benefits of the program and to encourage the participation of eligible households." Food Stamp Reg. § 270.1(nn), 40 Fed. Reg. 1883 (1975).

See FNS(FS) Instruction 732-6 (III) (1971). Similarly, in another regulation, Food Stamp Reg. § 271.1(k), 40 Fed. Reg. 1886 (1975); the FNS severely weakened the statutory language of "insure the participation of eligible households" by providing that states need only "encourage" their participation.

Were this court to defer to the administrative construction of 7 U.S.C. § 2019(e)(5), the defendants' conception of their responsibilities would clearly prevail. Normally,

3/ cont'd

it. Salesmenship. It's a sales job, and it is a sales job. The biggest thing I have to overcome is that most people think that this is welfare, and they don't want welfare." Id. at 125-126.

The plaintiffs' attorney in his questioning relied upon the word "encourage" in the regulation, see supra, whereas they now, quite correctly, base their claim upon the statutory language which is "insure."

"[w]hen faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration." Udall v. Tallman, 380 U.S. 1, 16 (1965); Gulf Oil Corp. v. Hickel, 435 F.2d 440, 444-445 (D.C. Cir. 1970). However, "[c]ourts need not defer to an administrative construction of a statute where there are 'compelling indications that it is wrong. Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 381 (1969) . . . " Espinoza v. Farah Mfg. Co., 414 U.S. 94-95 (1973); see R. V. McGinnis Theatres & Pay T.V., Inc. v. Video Independent Theatres, Inc., 386 F.2d 592 (10th Cir. 1967), cert. denied, 390 U.S. 1014 (1968); Government of Guam v. Koster, 362 F.2d 248 (9th Cir. 1966); Hometrust Life Ins. Co. v. United States Fidelity & Guaranty Co., 298 F.2d 379 (5th Cir. 1962). "Administrative regulations cannot be allowed to distort plain and obvious statutory language." Hoover v. United States, 348 F. Supp. 502, 505 (C.D. Cal. 1972). In this case the clear and obvious language of the statutory mandate with which the defendants are bound to comply is being distorted by administrative regulations.

In <u>Bennett v. Butz</u>, <u>supra</u>, the court was faced with a challenge, not to the adequacy of any individual state's "full participation" program, but rather to the sufficiency of the FNS's efforts to insure the compliance of all participating states with the statutory requirement. Upon reviewing the statutory history of the Focd Stamp Act and the considerations

which led to strengthening the Act's purpose by adding the "full participation" provision, a review which need not be repeated here, the court concluded:

"The statutory outreach" mandate reflects
Congressional concern with token participation
in the food stamp program. The statute uses
strong language. Outreach efforts are to entail
'effective action' not only to inform poor people
of the program's benefits but also to 'insure'
their participation. 7 U.S.C. § 2019(e)(5)."

F. Supp. at _____ (footnote not in original).

The court thus properly emphasized that the statutory mandate is expressed in the conjunctive; there are two elements to it, a state's program must both "inform" and "insure" participation. The plain language of the statute resists the efforts of both the FNS and the defendants to equate these two obligations and reduce a "full participation" program to solely a communicative effort. While informing low-income households of the availability of food stamp benefits is clearly a prerequisite to insuring the full participation of eligible households, a state has not fully satisfied its obligations by merely imparting such information. It must then take further steps to insure that those who are eligible actually

Judge Lord used the term "outreach" in referring to the statutory language. That term, however, is not used in the statute, but rather was coined by the FNS to refer to an information program only. I have chosen to use the term "full participation" program to describe the statutory mandate, while reserving the term "outreach" for the informing element of a "full participation" program.

apply for benefits and receive them with dispatch. Although the state obviously cannot force eligible households to participate, it can and must operate a food stamp program which actively <u>insures</u> participation by placing as few obstacles as possible in the way of those applying for benefits. A failure to do so would be as serious a violation of 7 U.S.C. § 2019(e)(5) as a failure to undertake an information imparting program.

Although never made a part of the record, the defendants, in a chambers conference, argued that none of the plaintiffs were any longer aggrieved by the defendants' alleged failure to implement an adequate "full participation" program and thus lacked the requisite standing to raise that claim. They maintained that as all of the plaintiffs had either applied for or were receiving food stamps, the issue was moot as to them; they no longer needed to be informed about the program nor was there any longer a need to insure their participation.

To argue that because the named plaintiffs knew about the availability of food stamps and were receiving them when the suit was begun they should not be permitted to litigate the issue of whether the defendants are complying with the statute's mandate to "inform" and "insure" participation would mean that no one could ever do so. It is obvious that any poor person who might bring such a suit must have known about the availability of stamps before he commenced it. The defendants overlook the fact that this is a class action brought by plaintiffs in their own behalf and in behalf of other eligible persons "who were not informed of the availability and benefits of the food stamp program, and were not encouraged to participate . . ." Even if the case is moot as to these particular plaintiffs, there is not the slightest doubt that there are other members of the class who are still aggrieved and thus the action may continue as a viable one. The same argument was rejected in Conover v. Montemuro, 477 F.2d 1073, 1085 (3d Cir. 1973) (rehearing en banc) (concurring opinion of Adams, J.):

> "Whichever contention is pressed--mootness or standing--each is predicated, in this particular case, on the ground that this suit, looking

В.

The informing and insuring elements of a full participation program are largely complementary and both necessary for an effective food stamp program. As a prelude to a consideration of these separate elements, it will be useful to take a grandstand view of what has been accomplished and observe the extent to which there has been a shortfall in achievement of the statutory goal of full participation.

The statistical information which the parties have provided indicates that a large percentage of eligible house-holds are not receiving food stamps in this state. Although this court does not have before it recent official statistics, the plaintiffs, at the hearing, did present a report of the Community Nutrition Institute, a "public interest" organization,

5/ cont'd

solely to future relief, is not properly maintainable since the named plaintiffs have suffered only a past wrong. These arguments are without merit to the extent they overlook that this suit is a class action, as the district court permitted, on behalf of 'all juveniles in Philadelphia, Pennsylvania, who have been or will be affected by action of the defendants alleged in the complaint.'"

Cf. Sosna v. State of Jowa, 43 U.S.L.W. 4125, 4128 n.11 (U.S., Jan. 14, 1975); Johnson v. New York State Education Dept., 409 U.S. 75, 79 n.7 (1972) (Marshall, J. concurring); Rivera v. Freeman, 469 F.2d 1159, 1163 (9th Cir. 1972); Gatling v. Butler, 52 F.R.D. 389, 394-395 (D. Conn. 1971). Even if this were not a class action, the defendants' argument is not necessarily persuasive. See Bennett v. Butz, supra; see generally Note, The Mootness Doctrine in the Supreme Court, 88 Harv. L. Rev. 373 (1974).

which revealed that as of January 1974 the percentage of eligible households in Connecticut participating in the food stamp program was 43.9%. At that point in time, the national average was 39.2%. 4CNI Weekly Report, No. 20 (May 16, 1974).

Since that time, there are indications that the percentage may have improved. In January 1974, the total number of participants in the state was 128,378. By June 1974, that number had increased to 138,567. FNS, Statistical Summary of Operations, June 1974. In addition, monthly reports being

These statistics were derived from comparing the number of food stamp participants with the number of households in the state with incomes of 125% of the poverty line, the income limit at the time for most household sizes. The former statistic was obtained from official Department of Agriculture figures and the latter was based upon the 1970 census.

While these statistics might be indicative of a trend, this court is hesitant to place too much reliance upon them. As is frequently the case, statistics can be shaped to support either side of an argument. In this case the plaintiffs point to the fact that in July 1971 the total number of food stamp participants in Connecticut was 140,528, approximately 2,000 more than in June 1974, a decrease of 2% over a two-and-one-half-year period. During the same period, the national figures reflected an increase in participation from 10,420,090 in July 1971 to 13,480,185 in June 1974, an increase of approximately 30%. Plaintiffs argue that this difference is a measure of the failure of the state's efforts to satisfy their "full participation" responsibilities.

The defendants, on the other hand, focus upon the recent changes in participation statistics. In January 1974, the number of Connecticut participants was 128,378 whereas in June 1974 the number had increased to 138,567, an increase of approximately 8%. During the same period the national figures reflected a change from 13,067,545 in January to 13,480,185 in June, an increase or only 3%. The defendants, of course, argue that this indicates the recent success of their "full participation" efforts. Looked at from the other circ, however, it indicates the greater success which could be achieved were the state to intensify what this court finds to be its very meager "full participation" program, see infra.

submitted to the plaintiffs and the court by the defendants indicate that over the past six months the number of food stamp applications of persons who are not receiving public assistance has increased from 3,417 in July 1974 to 4,384 in December 1974, an increase of approximately 28%. During that same period, the number of applications approved per month has increased from 2,375 in July to 3,106 in December, an increase of approximately 31%.

As will appear <u>infra</u>, the state processes the food stamp applications of persons receiving or applying for public assistance separately from the applications of those not participating in such programs. The defendants by agreement with the plaintiffs have undertaken, during the pendency of this law suit, to submit monthly statistics regarding the processing of the so-called "non-P.A." applications.

Again these statistics are not necessarily indicative of any change in the percentage of eligible persons participating in the food stamp program. The court takes judicial notice of the fact that the unemployment rate in the state has also sharply increased during the period in question. Statistics obtained from the Connecticut Department of Labor reveal that in July the unemployment rate in the state was 7%. That figure and those for other summer months were swollen by including in the category of the unemployed those persons on summer vacation who were not receiving vacation pay and therefore were eligible for unemployment compensation. The change in the state's employment situation is better gauged by a comparison of the October unemployment statistic of 5.6% with that of 7.1% for December 1974. This represents an increase of 27% in the rate of unemployment. During that same period the number of non-public assistance applications, see note 8, supra, decreased by approximately 11%. In fairness to the defendants, it should be noted that the number of applications approved in December was 16% greater than in October. However, the statistics do indicate the existence of a large number of recently unemployed persons in the state who are not applying for food stamp benefits.

However, as set out in notes 7 and 9, <u>supra</u>, these figures are not a reliable guide to any change in the percentage of eligible persons participating in the food stamp program. On balance, the statistics indicate that there is still an unfortunately large number of eligible households in the state who must still be informed of the availability of food stamp benefits or whose participation in the program must still be insured.

"Outreach"

Because of their limited conception of their "full participation" program obligations, the defendants have only drafted and implemented a plan to inform low income households of the availability of food stamps. That plan, which will be referred to as "outreach," is formally set out in an amendment to their State Plan of Operation, submitted to the FNS for approval on September 17, 1973. Under FNS(FS) Instruction 732-6(V) (1971) the defendants were actually required to have submitted that amendment by January 24, 1972. This one-and-one-half-year delay in even drafting their "outreach" program is perhaps indicative of the low priority accorded it by the state. 11/

See note 4, supra.

In Bennett v. Butz, supra, Judge Lord found that as of the end of fiscal year 1973 only nine states had failed to implement an outreach program. Clearly, Connecticut was one of this small minority.

A reading of that plan, which was approved by the $\frac{12}{}$ reveals that the state has failed to satisfy even the formal requirements of FNS(FS) Instruction 732-6. $\frac{13}{}$ For example, the FNS Instruction requires the state to describe the "methods to be used, on a continuing basis, in monitoring and evaluating the State and local outreach efforts." FNS(FS) Instruction 732-6(V)(a)(2). The defendants' outreach program contains no such provision. In addition, Instruction 732-6 (V)(B)(1) requires the outreach plan to include:

"A timetable by which the State Agency shall develop and put into effect the plans to reach potentially eligible households. Indicate the degree of priority given to such factors as major ethnic groups, senior citizens, migrants, and others who reside in low-income areas where food stamp participation is low."

The fact that the FNS approved the state outreach plan is not indicative of the sufficiency of the program under the minimal standards of the FNS Instruction. In Bennett v. Butz, supra, the court, in reviewing the sufficiency of FNS's outreach efforts, found that "virtually all of the outreach plans submitted [and approved by FNS] reflect deficiencies which, in the absence of evidence to the contrary, this Court concludes represent clear and substantial non-compliance with the statute."

F. Supp at

In the face of this judicially recognized failure of the FNS to comply with the statutory "full participation" directive, this court does not accord the FNS determination with regard to the adequacy of the defendants' outreach plan the deference which is normally due to administrative action.

It is interesting to note that the Bennett court determined that most state outreach plans submitted for FNS approval at least conformed to the format required by the Instruction. Connecticut is apparently in the minority.

The section of the state's plan entitled "Priorities and Time'able" simply does not contain the required information. 14/
As set out in the margin, that section is very general and demonstrates a lack of thought and concern for satisfying the very minimal requirements imposed by the federal instructions.

Of course, compliance with the informing or "outreach" element of the federal "full participation" mandate must be measured not only by the extent to which the state "plan" satisfies formal requirements, but also by the degree to which the state has actually engaged in informational activities.

From a consideration of the evidence in this case, it has become apparent that the state's efforts have been deficient. In fact, perhaps the most telling indictment of the program

14/

[&]quot;The implementation of the Outreach Program will become effective October 1, 1973, contingent upon formal approval by the Food and Nutrition Service. Following the approval, State Welfare Department will compile and maintain listing of community groups, cooperative agencies and others who are actively engaged in outreach efforts.

[&]quot;Also, the following activities will be undertaken on an ongoing basis to fulfill our Outreach goals:

a. Media appearances regarding new regulations

Notifications and bulletins to community agencies and referral workers concerning new regulations, emphasis on new tables of eligibility;

c. Talks and exhibits;

is suggested by the responses of defendant Cecil McCarthy, director of the state food stamp program, to questions posed during the course of a deposition:

"Q. So the only real outreach is done on an ad hoc basis whenever an opportunity arises?

"A. That's right.

"Q. There's no . . . there are no permanent ongoing activities as part of an outreach program?

"A. No."

Deposition of Cecil McCarthy 134 (May 30, 1974).

The record in this case amply supports defendant McCarthy's telling admission. As required by FNS(FS) Instruction 732-6, the defendants in December 1974 submitted to the FNS an annual report detailing the nature, scope and success of their outreach activities during the preceding year. The report contains a listing of all of the private organizations and outside agencies contacted during that year by food stamp program personnel. While beginning at a rather slow pace (only two contacts in November 1973), the number of contacts increased significantly by year's end (17 contacts in October 1974). A large majority of those contacts were undertaken personally by defendant McCarthy, the only individual whom the state plan indicated would be engaged in outreach activities. While this recent burst of personal activity by defendant McCarthy is impressive, it is clear that the scope of potential outreach activities is far beyond the ability

of any one individual to undertake, particularly when that individual is also personally responsible for the general administration of the entire food stamp program.

Furthermore, on closer scrutiny it is apparent that some of the contacts listed by the defendants in their annual report bear little or no relationship to "outreach"; the defendants seem to have listed in their report all contacts with outside groups, even those not related to informing eligible households about the food stamp program.

In addition, a large number of those contacts were with senior citizens' organizations with little apparent attention being given to other distinct target groups. While the defendants' efforts with regard to senior citizens is commendable, FNS(FS) Instruction 732-6 and the clear intent of the statute mandate outreach efforts among all eligible

Federal regulations now provide that the federal government will reimburse the state for 50% of the cost of administering its outreach program. Food Stamp Reg. § 271.2, 40 Fed. Reg. 1887 (1975). At the time the defendants submitted their outreach plan to the FNS in September 1973, the applicable regulation, 7 C.F.R. § 271.2(a)(2) (1974), provided for reimbursement in the amount of 62 1/2% for outreach activities. The defendants' plan provided that reimbursement would only be sought at that rate for 50% of defendant McCarthy's salary, and the defendants never even actually applied for that amount The fact that the time of no other employee was allocated to outreach activities again indicates the defendants' very limited conception of the program.

For example, the report lists several meetings with administrative staff and branch managers of several banks, and one meeting with the plaintiffs' attorneys which has now been revealed to have been for the purpose of taking defendant McCarthy's deposition.

households. Finally, there is no indication in the report as to whether these contacts were initiated by the defendants or by the outside agencies or private organizations. Mr. McCarthy in his deposition testified that he actively socks the opportunity to speak before such groups. However, substantial documentary evidence, some of it submitted by the defendants, indicates that at least some, if not a good part, of these contacts were not initiated by the defendants.

The defendants also seem to have made minimal use of the media in their efforts to inform low-income families of the availability of food stamp benefits. Their annual report reflects this fact and excuses it as follows: "It must be pointed out that while media appearances appear light, the programs where we do appear have very large audience ratings."

Annual Outreach Report, § III at 8. A series of promotional

As an example of this exposure, the report focuses upon a television editorial regarding deficiencies in the state's feod stamp program and to which the defendants responded. Interestingly, that editorial contained the following comment:

[&]quot;And at the same time, we would urge a real publicity campaign for the Food Stamp Program. Right now, McCarthy depends largely on public service announcements, his own lectures and occasional free advertising to inform the public about food stamps.

[&]quot;We can't help wondering what the response would be if they were advertised as often and as widely as the State Lottery is." WFSB-TV Editorial, September 13, 1974.

The Commissioner of Welfare in his televised reply did not respond to this criticism and suggestion.

"spots" were allegedly sent to television and radio stations in the state and in their report the defendants stated that "[i]t can be reported that nearly all stations used the material and early re-release is planned." Id. at 8-9.

However, a survey undertaken, with the parties' approval, of the state's major television and radio stations, including the only "soul" and Spanish-language stations, revealed little or no public service or news coverage of the food stamp program. In addition, with the exception of one station, the coverage was generally initiated by the station and not the defendants. The fact that scae stations have undertaken programming on their own initiative does not satisfy the defendants' outreach responsibilities, but rather indicates a media receptiveness of which the defendants could take advantage.

Finally, in terms of the <u>informing</u> element of the "full participation" requirement, the defendants indicate in their

An example of these responses is the text of the following letter from the Public Service Director of WKND, the only "soul radio" station in the state and the obvious medium for informing the black community about food stamp benefits:

[&]quot;In reference to your letter dated, January 8, 1975, regarding the Food Stamp Program, WKND's Public Service Department has not received any information from the State Department of Welfare, informing the public about Food Stamp Benefits. I can't speak for the News Department, only the Public Service Department. I've had no encouragement from any State Official to broadcast any material on Food Stamp Benefits."

tributed throughout the state and that employees in the local welfare offices respond to numerous requests for information about the program. This contention has not been challenged by the plaintiffs. In addition, it appears that the defendants, to a limited extent, have used the services of at least some "other federally funded agencies and organizations,"

7 U.S.C. § 2019(e)(5) (1970), in their "program," specifically through cooperation with the SSI "Operation Find" project.

However, the true extent of the cooperation with this program or others is not indicated by the evidence.

"Insurance"

The remaining challenges are directed to administrative practices as being unnecessary hindrances to the achievement of the goal of "full participation." The plaintiffs allege that eligible persons encounter considerable difficulties and delays in applying for food stamp benefits. Primary among these complaints is the delay encountered by persons in making their initial applications. Federal regulations provide that food stamp applications must be processed within 30 days of their receipt by the certification office. Food Stamp Reg. § 271.4(a)(3), 40 Fed. Reg. 1890 (1975). It is perfectly clear that "the application may be completed in the certification office or may be submitted by mail." FNS, The Food Stamp Certification Handbook § 2121 at 13 (1974) (hereinafter referred to as "Handbook"). The deferents accept this policy

and, in fact, have issued a directive to district directors containing the following provision:

"District Offices will mail or give application forms (W1301) to any household making a written or oral request for one. Such a household shall be told of our willingness to take and process the application at our District Offices or at our scheduled circuit locations to eliminate the delay that a mail operation entails. When a mail application is received in the District Office it shall be immediately examined for signature and address and if these appear, the application shall be clearly and legibly date stamped.

"The 30 day limitations for this type of application runs from the date of the date stamp and not from the date of the applicant's signature." Interdepartment Message, May 3, 1974 (emphasis in original).

The plaintiffs argue, however, that although the defendants are willing to mail applications to households, there is no policy directing local certifying officers to inform persons of this service. Rather, they assert, it is the general policy upon inquiry of prospective applicants to schedule an interview for the next date which the welfare office has available, often as long as a month later, at which time the applicant first completes his application. This results, it is alleged, in substantial and discouraging delays because the 30-day period for the processing of applications does not begin to run until the application is actually completed. The plaintiffs claim that applicants should be allowed and encouraged to complete their applications immediately upon inquiring about the program, either through the mail of in the certification office.

It is not denied by the defendants that there is currently no written policy issued to welfare workers directing them to offer to mail applications or provide them immediately to persons who walk into the certifying offices. See Deposition of Cecil McCarthy 13 (May 30, 1974). However, it is the defendants' position that this is the defacto practice.

The plaintiffs have shown numerous instances in which applicants were subjected to substantial delay. For example, plaintiff Annie Tyson went to the Bridgeport welfare office to apply for food stamp and AFDC benefits on February 13, 1974, and was prepared at that time to apply for benefits. However, she was told to return two weeks later to begin the application process. She was not informed of her right to start the 30-day processing period running by immediately completing an application. Similarly, plaintiff Ethel Williams telephoned the Manchester District Welfare Office on January 9, 1974, to apply for food stamps and AFDC benefits, but was give an appointment to report to the welfare office on January 29, 1974. She was not informed of the possibility of having the application mailed to her nor told the advantages of such a course of action. In addition to these and other individual instances of delay, the plaintiffs were able to demonstrate through the affidavit of Kevin Mahoney, Director of Social Services for the Town of Mansfield, that as of mid-October, persons in his town had to wait three to four weeks before being allowed to make application for food stamps.

On the basis of this evidence, it appears that although the defendants are willing to supply applications upon request and to permit immediate application, there is no official policy to encourage such early applications. In the absence of a request by the applicant to complete immediately an application either through the mail or in the certifying office, the defendants appear to prefer to delay submission of the application until a required interview can also be scheduled. This, of course, enlarges the time for the defendants to satisfy the 30-day certification requirement.

Another of the plaintiffs' complaints centers around the interview requirement itself. 19/ Before an applicant may be certified for food stamp benefits, he or some authorized representative must be interviewed by a certification worker. The purpose for this requirement is set out in <u>Handbook</u> § 2122 at 21:

"The purpose of the interview is to establish, to the satisfaction of the EV, that the actual facts of the case are consistent with the statements on the application concerning household income and circumstances and to establish, subject to subsequent verification, whether or not the household is eligible for food stamp assistance. The only successful method of making such a determination is the use of investigative interview techniques to conduct a thorough and

An interview is required only of non-public assistance households. See Food Stamp Reg. § 271.4(a)(1) & (2), 40 Fe Reg. 1890 (1975). Of course, an interview is conducted when household first applies for both food stamps and rederal nided public assistance.

searching inquiry into household circumstances. Merely reviewing the application for completeness is no substitute for the investigative interview."

Federal regulations provide that such an interview may be conducted "in a personal contact in the office, in a home visit, or by a telephone call" Food Stamp Reg. § 271.4(a)(2)(ii), 40 Fed. Reg. 1890 (1975). However, FNS(FS) Instruction 732-1(II)(B)(2) places some restrictions upon the use of telephone interviews. It provides:

"Persons who are unable to come into the office to be interviewed may be interviewed in a home visit or by telephone. When it is necessary to interview the applicant by telephone, the reason should be fully documented in the case file. Inconvenience to the applicant will not be sufficient reason for conducting the interview by telephone." Emphasis in original)

In addition, <u>Handbers</u> 5 2122 at 21, adds that "[n]o household shall be interviewed by telephone for any two successive certifications without a face-to-face interview in the office or at home."

The defendants have admittedly adopted a far more restrictive policy than that allowed by the federal regulations and instructions. Telephone interviews are conducted under no circumstances and home interviews are conducted only where the applicant is elderly, housebound and living alone. Thus, persons like plaintiffs Thomas Burgess or Jayne Pierson, who are unable to travel to certification offices for interviews scause of illness or injury, are not interviewed by

telephone or at home, even though federal regulations would permit it. Similarly, no provision is made for individuals with pre-school children at home or those living considerable distances from certification offices with no available public or private transportation.

The defendants in May 1974 did initiate a "Food Stamp Circuit Rider" system under which a certification work r assigned to a district welfare office conducts interviews in outlying towns on a regularly scheduled basis for anywhere from one-half day to five days a week. While this system certainly does represent a step in the direction of insuring full participation by making the program more accessible to more citizens of the state, it is still not an adequate substitute for those unable to attend interviews even at these circuit riding locations. Moreover, as noted above, there is evidence that this system is currently overburdened and unable in some communities to provide interviews within three or four weeks of an individual's initial inquiry concerning the program. Inevitably, this means that individuals are being referred to more distant offices with the attendant transportation difficulties which the circuit riding system was designed to avoid.

Finally, it does not appear that the harsh impact of
the defendants' refusal to conduct telephone interviews is
currently being ameliorated by any effort on the defendants'
part to seek the assistance of outside agencies or organizations

to provide transportation for applicants to certification offices. The possibility of such cooperation for this very purpose is even recognized in FNS(FS) Instruction 732-6(IV), but was never acted upon by defendants.

C.

It is clear from a review of this evidence that the defendants have failed to comply with the requirements of 7 U.S.C. § 2019(e)(5). The statute in explicit terms requires the state to "undertake effective action . . . to inform lowincom households concerning the availability and benefits of the food stamp program and insure the participation of eligible households." 7 U.S.C. § 2019(e)(5). Its purpose is to "safeguard the health and well-being of the Nation's population" by enabling "low-income households to purchase a nutritionally adequate diet" above the level of hunger and malnutrition. 7 U.S.C. § 2011. Although poverty may once have been considered an inevitable part of the human condition the modern perspective is that it is a social problem to be eradicated, and the suffering of hunger and malnutrition, with the adverse effect which we know these have upon human health, is the core element of poverty.

. While perfection in carrying out the program may not be obtainable, and arguments can be made to justify a failure to obtain one hundred per cent participation, perfection is not called for. The statute requires the state to do what can be done. The controlling words in the statute are "effective action." The allocation of one man to undertake the task of informing the many thousands of eligible families living in poverty of the availability of food stamps is tragically inadequate. Viewed in perspective with the federal government's reimbursement of 50% of the state's costs, the expense of an adequate program would be insubstantial. If a small fraction of the cost of informing the state's citizens of the availability and advantage of buying lottery tickets (and insuring their participation in that program) were budgeted for a "full participation" program, the obvious wasting of human resources now threatened would be largely eliminated. To do in the future what has not been done in the past calls for no heavy commitment of the state's resources.

The relative inaction of the past--and furthermore, inaction where action has been mandated--has not been justified. The specific relief this makes necessary will be set forth after the other claims made in this case are considered.

Other Claims

The plaintiffs' other claims all involve, with one exception, challenges to the failure of the defendants to comply with FNS regulations or instructions. See in which relief is appropriate shall be considered first.

"Variable Purchase Option"

required participating states to implement a variable purchase option plan which would allow food stamp recipients to purchase a fractional part of their monthly allotment. See

Food Stamp Reg. § 271.6(d)(3), 40 Fed. Reg. 1891 (1975).

Pursuant to 7 C.F.R. § 271.1(s)(v) (1974) (since superseded), each state was required to implement such a plan by June 1, 1972. Not surprisingly, in light of the defendants' attitudes revealed above, no such plan was implemented in this state until July 1, 1974, more than two years after the deadline established by the federal regulations. Although at the cutset of this litigation the plaintiffs challenged the defendants' failure to implement any variable purchase plan, they now contend that the plan, as implemented, does not satisfy

⁷ U.S.C. § 2016(b) (1970) provides in relevant part:

[&]quot;[T]he Secretary shall provide a reasonable opportunity for any eligible household to elect to be issued a coupon allotment having a face value which is less than the face value of the coupon allotment authorized to be issued to them under subsection (a) of this section. The charge to be paid by eligible households electing to exercise the option set forth in this subsection shall be an amount which bears the same ratio to the amount which would have been charged under subsection (b) of this section as the face value of the coupon allotment actually issued to them bears to the face value of the coupon allotment that would have been issued to them under subsection (a) of this section."

the basic minimal requirements as established by the FNS in FNS(FS) Instruction 734-6 (1971). I agree.

Instruction 734-6(IV) & (VI, provides that, at a minimum, the variable purchase options must be listed on the ATP card itself. For persons receiving monthly cards, options allowing an election of one-quarter, one-half, three-quarters or the full monthly allotment must be listed. For those receiving cards on a semi-monthly basis, each card must list options for one-quarter or one-half of the full monthly allotment. The recipient is to indicate his election of options by signing on the appropriate line on the card.

Under Food Stamp Reg. § 271.6(d)(4), 40 Fed. Reg. 1891-1892 (1975), the defendants must, to be in full compliance with the law, "insure that each eligible household is offered the option at the time of certification of choosing to receive coupons on a semimonthly basis." Id. See Handbook § 2341 at 115. The advantages for participants in being allowed to elect semimonthly benefits is the greater flexibility which it allows them. Thus, persons who receive monthly ATP's must elect at the beginning of each month whether to purchase one-quarter, one-half, three-quarters or their fe'll monthly allotment, whereas persons receiving semi-monthly ATP's have the option twice a month of purchasing one-quarter or one-half of their monthly allotment.

On the basis of the Interdepartment Message of June 18, 1974, from the Deputy Welfare Commissioner of Connecticut to the District Directors in which the defendants' variable purchase option plan is described, it appears that the defendants only permit semi-monthly issuance for recipients receiving ADC benefits and for the so-called "variable income" non-public assistance households. OAA-AB-AD households and "those Non PA households who receive their money once per month e.g. OASI, Pensions, Annuities, etc.," id., are provided monthly issuance. However, as the plaintiffs have not challenged the defendants' compliance with Food Stamp Reg. § 271.6(d)(4), supra, I do not rule upon the issue.

Appended to the Instruction is a sample of the ATP card which the FNS intended the states to employ in implementing the variable purchase option program.

The defendants have all tiedly adopted a program which does not satisfy the minimal requirements established in Instruction 734-6. Under their plan a food stamp recipient receives an ATP card (or two cards if he is on semi-monthly issuance) which does not itself list the purchase options. If he wants to purchase less than the face amount on the ATP card, he may only do so by personally turning in his card at the district welfare office, filling out a form and waiting for receipt of a new ATP card in the mail.

Quite obviously the defendants' plan places substantial burdens upon food stamp beneficiaries which are not involved in the minimal plan mandated by Instruction 734-6. In fact, those extra burdens probably render the variable purchase option unusable in the case of many individuals who are unable to make the frequently substantial journey to a district welfare office. Again, the defendants would seem to have violated not only specific regulatory instructions, but also the Congressional policy underlying the Food Stamp Act. 7 U.S.C. § 2011 (1970).

The defendants advance two justifications for their deficient program. First, they point out that the FNS itself has approved their plan. To be sure, Instruction 734-6(1V)(B) (3) provides for FNS approval of an alternative variable

purchase option plan. However, that section of the Instruction states:

"The State Agency may devise its own forms and instructions, providing the minimum requirements listed in paragraph A, above, are met.

The State Agency shall submit these forms and instructions to FNS for review and approval prior to implementation." Id. (Emphasis added)

The minimum requirements of paragraph A are precisely those which the defendants' plan does not satisfy, namely, the listing of the options on the ATP card and the selection of an option by endorsement on the card itself. Clearly, the FNS, in approving the defendants' plan, violated its own Instruction 734-6. Its determination of the adequacy of the defendants' plan is therefore entitled to little or no weight.

Secondly, the defendants argue that it would be impractical to implement a plan which satisfied the minimum requirements of Instruction 734-6. Defendant Cecil McCarthy, in an affidavit submitted to this court, averred that ATP cards having multiple options are incompatible with the state's centralized computer issuing system. Use of such multiple option cards, he urged, mandates "a manual system of accounting and reporting." Affidavit of Cecil McCarthy (December 6, 1974). In addition, he states that cooperating banks "have no wish to be part of a program that offers this type of option." Id. He foresees a possible situation in which the state of Connecticut would be left with no banks willing to distribute food stamps to participating households.

Although there might be a factual basis for some of the defendants' concerns, this court finds it difficult to believe that the state of Connecticut lacks the administrative skill and ingenuity to overcome the types of problems which might result from the required implementation of a variable option purchase plan meeting the minimal requirements of Instruction 734-6. In fact, 21 states which, like Connecticut, issue ATP cards from a central computer have already implemented such a program. Such widespread and apparently successful compliance belies the gravity of the defendants' concerns.

I therefore hold that the defendants' variable option purchase plan does not satisfy the minimum requirements of federal law and they shall be ordered to implement a plan in compliance with FNS(FS) Instruction 734-6.

"Immediate Certification for Households with Zero Purchase Requirement"

The plaintiffs allege that the defendants are violating both their own and federal food stamp regulations by failing to provide ergency 30-day certification for households whose applications indicate an income so low that they will likely be entitled to full certification with a zero purchase requirement. The federal regulation upon which they rely is Food Stamp Reg. § 271.4(a)(2)(iii), 40 Fed. Reg. 1890 (1975) which provides, in part, that "[c]ertification may be made for

30 days without verification of eligibility factors with respect only to households which report an income so low that they have no purchase requirement and which appear, on the basis of other information furnished, to be eligible for participation." Connecticut Welfare Reg. FS-300.2(D) essentially echoes the federal regulation.

Although the plaintiffs maintain otherwise, it is quite apparent that states need not pursue this policy of emergency certification; § 271.4(a)(2)(iii) clearly uses the permissive "may" in describing the temporary certification procedure.

See FNS(FS) Instruction 732-1(IV)(D) (1973); Handbook §§ 2313, 2332.3 at 84, 114. However, as the defendants have at least facially chosen to adopt the policy, it is necessary to consider the plaintiffs' challenges to the manner in which they are implementing it.

First, however, a fuller description of the regulatory context in which the emergency certification procedure operates is appropriate. Food Stamp Reg. § 271.4(a)(2), supra, establisher the steps which must be taken by the states in the

While this case was sub judice, the plaintiffs brought to the court's attention the existence of what purports to be a new state food stamp manual. Because it appears that this is not legally effective, see Conn. Gen. Stat. Ann. § 4-163 (Supp. 1974) (§ 3 of the Uniform Model State Administrative Procedure Act), no consideration has been given to it. Furthermore, a reading of the new handbook revealed that the only claim substantially effected by any change in the regulations was that involving stroactive benefits to the date of application. The problem is considered in greater detail infra.

"In any case where a household indicates that it has income so low that there is a likelihood that a change must occur in order for the household to continue to subsist as an economic unit, verification of factors necessary to substantiate the facts of eligibility is required unless expenditures and income are so stable as to indicate that the household could maintain this level of existence for an extended period of time. At least one collateral contact is mandatory in cases of this type. Certification may

Nandbook § 2200.3 at 27 conveniently lists the nonfinancial eligibility standards:

[&]quot;Nonfinancial eligibility standards apply equally to PA, SSI, and NA households and consist of:

⁽¹⁾ Residency in the project area;

⁽²⁾ Citizenship or permanent alien status;

⁽³⁾ Availability of cooking facilities;

⁽⁴⁾ Prohibition against residency in boarding houses and institutions;

⁽⁵⁾ Work registration."

be made for 30 days without verification of eligibility factors with respect only to households which report an income so low that they have no purchase requirement and which appear, on the basis of other information furnished, to be eligible for participation."

Although this provision is somewhat ambiguous in terms of what it requires of the states in dealing with such households, its meaning has been clarified by FNS(FS) Instruction 732-1(IV)(D) (1973) and various provisions of the Handbook. From these it is clear that households reporting such low income must be subjected to even more rigorous verification than other households prior to certification. For example, Handbook § 2332.1 at 113 details the scope and depth of the interview which must be conducted with such applicants and provides that ordinarily certification in such cases should only be for one-month periods. In addition, Handbook § 2332.4 at 114 provides that such households "participating at the zero purchase level for 3 consecutive months must be made the subject of a full field investigation, including a home visit, to substantiate continuing eligibility and participation." Thus, rather than being the objects of special solicitude, the FNS seeks to treat households with zero purchase requirements as objects of suspicion. $\frac{24}{}$

The plaintiffs do not challenge these special provisions, nor is it clear whether the defendants have actually complied with them.

However, applicants with such low income may be temporarily certified pending verification for a one-month period. Handbook § 2313 at 84 establishes the procedures which must be followed for these optional pre-verification certifications: first, the in-depth interview required under Handbook § 2332.1, supra, must indicate probable eligibility following verification, and secondly, the certifying officer must make at least one collateral contact to confirm information in the application. Furthermore, § 2313 only allows such emergency certification once in every six months for any one household.

As noted at the outset, the defendants have adopted a regulation dealing with "Zero Purchase Households" which prevides that "preliminary certification pending verification, i.e. certification for 30 days without verification of eligibility factors, may be applied to these households if it appears they will be eligible for participation." Conn.

Welfare Reg. FS-300.2(D) (footnote not in original). Indeed, that policy was recently reiterated in an Interdepartment

Messa from the Connecticut Deputy Velfare Commissioner to the Descit Welfare Directors (May 3, 1974) which provided further that:

Of course, pursuant to <u>Mandbook</u> § 2313, supra, at least one collateral contact would have to be made prior to preliminary certification.

"It is expected that the instructions contained [in the regulation] would be followed exactly and, that a household reporting an income so low or, no income at all, so that there would be no purchase requirement, would be certified for participation for a 30 day period if all other prerequisites appear to be met."

(Emphasis in original)

Despite these statements and provisions, the plaintiffs maintain that the defendants' administration of this policy is deficient in several respects. Their first claim appears to be that all applicants who on the face of their application would be eligible for a zero purchase requirement must receive the 30-day preliminary certification. This claim is clearly negated by Handbook § 2313, Supra, which provides that before preliminary certification at least or collateral contact must be made by the certification worker and that all other eligibility requirements, such as work registration for all employable members of the household, See Food Stamp Reg. § 271.3(d), 40 Fed. Reg. 1889 (1975), must be apparently satisfied.

Their second complex of claims is more substantial.

Basically, they maintain that despite Conn. Welfare Reg. FS-300.2(D) most applicants who would be eligible for 30-day preliminary certification are, in fact, not being considered for it. This, they maintain, is the result of the lack of a true affirmative policy by the defendants to insure that all those who are eligible are actually considered. Rather, it appears that such applications are considered and processed

in the same manner as all other applications with the exception of those which the local certification officers might single out as special hardship cases. Thus, the local workers would seem to construe the permissive language in the State welfare regulation as providing them with the discretion to consider low income households for preliminary certification, but not mandating that they consider all such households to determine their eligibility.

Moreover, plaintiffs maintain that even those few who are approved for emergency certification do not receive their ATP's immediately. Forms are filled out, processed and forwarded to the central office for issuance of the ATP cards just as in the case of regular certifications. The whole process may take longer than a week, thus negating the very purpose of the preliminary certification process, to wit, the provision of immediate relief to the very poor.

The plaintiffs' claim is supported by the testimony of defendant Cecil McCarthy. In his deposition of May 30, 1974, Mr. McCarthy confirmed that delays of a week or more were normal in the issuance of ATP cards for persons with a zero purchase requirement on a 30-day preliminary certification. Furthermore, he also confirmed that there was no directive to district offices requiring them to process such applications in any way differently from regular applications. Only in the case of severe hardship, he stated, might a certification worker be inclined to push through a zero purchase certification as quickly a possible.

The record with regard to this issue is admittedly sparse. Nonetheless, on the basis of Mr. McCarthy's own testimony I conclude that the defendants are not now operating a program of preliminary 30-day certifications which insures that all households with very low incomes are given the same consideration for such emergency certification and immediate receipt of their ATP's. Having elected under Food Stamp Reg. § 271.4(a)(2)(iii) to provide 30-day emergency certifications, the defendants are bound to operate the program in a non-arbitrary manner so as to insure equal treatment for all similarly situated low income households.

Furthermore, the decision to provide preliminary certifications carries with it an obligation to insure that eligible households encounter no delays in receiving their ATP cards. Under FNS(FS) Instruction 734-2(VI)(C) (1969) the defendants are obliged to provide ATP's immediately for newly certified households in immediate need. By definition, households with a zero purchase requirement are in that category. The same provision states that such emergency ATP cards may be issued either by the district offices or by the central office, "provided that there are no delays in allowing the household to participate." Id. The admitted delay of one week or more from the date of approval in the district office to the issuance of the ATP by the defendants' central office does not satisfy the strict standard of FNS(FS) Instruction 73%-2 (VI)(C).

The defendants will therefore be required to implement a plan insuring that all zero purchase households will be considered equally and expeditiously for 30-day preliminary certification under the conditions of <u>Mandbook § 2313</u>, <u>supra</u>, and that once approved for such certification, the household will receive its ATP card as expeditiously as possible. If the immediate issuance of the ATP card cannot be guaranteed through the current system of central issuance, then the defendants will have to make provision for the issuance of the emergency ATP cards at the district office level.

"Immediate Certification of Households on General Assistance"

The plaintiffs also challenge the failure of the defendants to provide immediate certification for applicants receiving non-federally funded welfare benefits under the general assistance program administered by the towns in Connecticut. See Conn. Gen. Stat. Ann. § 17-273 et. seq. (Supp. 1974). Their claim essentially rests upon two arguments. First, they assert that the Connecticut general assistance program satisfies the FNS criteria for determining whether general assistance recipients may have their applications for food stamps processed under the more expeditious procedure provided by Food Stamp Reg. § 271.4(a)(1), supra. Secondly, they argue that the more expeditious procedure mandates immediate certification pon submission by the applicant of an affidavit. For reasons that will appear, the second of these arguments will be considered first.

The food stamp regulations establish two independent procedures for the certification of food stamp applications.

One such procedure, set out at Food Stamp Reg. § 271.4(a)(2), supra, has already been discussed above in connection with the certification of zero purchase households. That procedure is employed in the processing of the applications of households who are not receiving public assistance; currently, households receiving general assistance in this state fall into that category. The second procedure is employed in the processing of the applications of households receiving aid under federally aided public assistance programs or general assistance programs satisfying FNS criteria. That procedure is set out at Food Stamp Reg. § 271.4(a)(1) which provides:

"The State agency shall provide for the certification of households in which all members are included in a federally aided public assistance or general assistance grant, solely on the basis of information contained in an affidavit and the assistance case file."

In addition, a further distinction is made between these two categories of applicants in terms of the income eligibility criteria which must be applied to them:

"Households in which all members are included in a federally aided public assistance or general assistance grant shall, if otherwise eligible under this subchapter, be determined to be eligible to participate in the program while receiving such grants without regard to the income and resources of the household members." Food Stamp Reg. § 271.3(b), 40 Fed. Reg. 1868 (1975).

The plaintiffs read into the regulations a further distinction between these two categories of applicants. They argue that because a certification determination can be made solely on the basis of the applicant's affidavit and the assistance case file, that such a determination can be made quickly and in fact, must be made immediately upon submission of the affidavit. Their contention is, however, not supported by a fair reading of the federal regulations. The only provision in the regulations for immediate certification is Food Stamp Reg. § 271.4(a)(2)(iii), supra, discussed above in connection with zero purchase households. Otherwise, the only reference to time limitations for the processing of applications is that contained in Food Stamp Reg. § 271.4(a)(3), 40 Fed. Reg. 1890 (1975) which provides in relevant part:

"The State agency shall provide for the processing of each affidavit or Application for Participation and notify the applicant household of the action taken within reasonable state-established time standards, which shall ments." (Emphasis added)

Presumably the defendants could and should provide 30-day emergency certification for public assistance applicants who the reason for the special provision for 30-day certifications for non-public assistance households is that such certifications tions represent an exception in such cases to the normal requirement that income be verified before certification. In ment for verification independent of the assistance case file anomalous if the simplified procedure provided for public assistance applicants were read to exclude them from consideration for 30-day emerger, y certification pending final verification.

Under Food Stamp Reg. § 270.2(a), 40 Fed. Reg. 1882 (1975), the term "affidavit" is defined as being the signed statement of application submitted by the head of a household, or his representative, all of whose members are receiving federally aided public assistance or state general assistance. Thus, FNS clearly contemplated that the states would have the same 30 days in which to process those applications as they have for non-public assistance applications.

This conclusion, however, does not render it unneces—
sary to consider the plaintiffs' claim that general assistance
households in Connecticut should be treated under the simpli—
fied procedure of Food Stamp Reg. § 271.4(a)(1). Although
couched in terms of entitlement to immediate certification,
their claim can be construed more liberally to be that general
assistance households are entitled to treatment under § 271.4

(a)(1) because the procedure provided thereunder is less

The Department of Agriculture which participated in this case as amicus curiae agrees with this conclusion. At page 6 of its brief it states:

[&]quot;In any event, public assistance households are not provided immediate certification under 7 CFR 271.4(a)(1). Such households are considered to be automatically eligible for the program only as to the factors of income and resources. With respect to other eligibility factors, and to numerous other program determinations (for example, the level of income for termination of purchase requirements) such households must be certified in the same manner as non-public assistance households. Likewise, affidavits must be provided and any inconsistent items verified. Thus, in terms of immediacy of certification, public assistance how olds se treated the same as non-assistance households, and in neither case is immediate certification provided."

burdensome and will likely result in faster certification determinations.

In fact, there is no doubt that general assistance households would benefit greatly were their applications processed under § 271.4(a)(1) as opposed to § 271.4(a)(2). First, the defendants would not have to conduct an interview prior to certification. Handbook § 2117 at 12 provides that "[t]he interview of PA households shall be satisfied by the interview conducted in connection with their certification for public assistance."28/ Secondly, as noted above, the defendants would not have to independently verify the income figures reported in the applicant's affidavit. They could confirm such information by reference to the general assistance case file which could either be made physically available to them by the town welfare officials or information from which could be provided by telephone contact. There is litt? doubt that this procedure would be less burdensome to both the plaintiffs and the defendants and would likely result in

In fact, as set out in <u>Handbook</u> § 2115 at 11, there is really no need for the public assistance applicant to visit the food stamp certifying office:

[&]quot;PA households who apply for food stamp benefits are certified on the basis of an affidavit and information contained in the PA case file. Households which are currently recipients of public assistance may mail in the affidavit. There should be no need for the PA recipient to make a special visit to the office to execute the affidavit. A new affidavit will be executed at each subsequent certification."

the plaintiffs receiving food stamp benefits more quickly than under current procedures.

The plaintiffs claim that Connecticut's general assistance program satisfies the criteria of Food Stamp Reg.

§ 270.2(ce), 40 Fed. Reg. 1883 (1975) and FNS(FS) Instruction
732-5, and thus applicant households, all of whose members
are receiving general assistance, should be certified pursuant to the provisions of § 271.4(a)(1). Food Stamp Reg.

§ 270.2(ce) essentially provides that the FNS shall determine which general assistance programs may be equated with feder
ally aided public assistance programs for the purposes of

§ 271.4(a)(1). Generally, the standard to be applied is whether the general assistance program applies the same or similar "criteria of need" as that applied under any of the federally aided assistance programs.

FNS(FS) Instruction 732-5 refines the standard of \$ 270.2(ce) by establishing specific criteria which must be satisfied by the general assistance program. There are seven criteria of which the program must satisfy one of the first four and all of the final three. The plaintiffs concede that Connecticut's general assistance program does not satisfy any of the first three standards; it is their contention that the program does meet the fourth and the final three, all of which are set out in the margin. 29/

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[&]quot;4. Upon request of the State Agency, programs administered by a local governmental agency, other than the agency administering the

There is really no dispute among the parties that the fourth criteria has been satisfied. Under controlling Connecticut law, see Conn. Gen. Stat. Ann. § 17-273 (Supp. 1974), the local towns must administer a general assistance program, subject to 90% reimbursement from the state. Conn. Gen. Stat. Ann. § 12-292 (Supp. 1974). It is also clear that food stamp certification responsibility is retained by the State Agency and that a written agreement has been executed between the defendants and each of the towns in this state.

There also can be little doubt that the state's general assistance program satisfies FNS(FS) Instruction 732-5 (III)(A)(5) & (6). Under Conn. Gen. Stat. Ann. § 17-3a (Supp.

29/ cont'd

federally aided public assistance programs, providing that responsibility for food stamp certification is retained by the State Agency ...d a written agreement is executed outlining responsibilities of each agency; and

- "5. Standards of assistance are the same as or similar to those in a federally aided public assistance program. Such standards may be at a lower level or less comprehensive than public assistance standards; and
- "6. Other criteria of need, such as resource limitations, do not exceed those used in the federally aided public assistance programs; and
- "7. The personnel responsible for certification of general assistance households shall meet the personnel standar as specified in Section 271.1(g) of the revised Food Stamp Program Regulations issued July 29, 1971."
 FNS(FS) Instruction 732-5(III)(A) (1971) (cmphs is in original).

1974), the defendant Commissioner of Welfare has the responsibility of "establishing mandatory standards concerning the granting of general assistance by towns, including standards for . . . eligibility and extent of need . . . , all with the intent of aiding the towns . . . in the efficient administration of the laws relating to the granting of general assistance."

There is no dispute that the Commissioner has, in fact, established standards of eligibility for general assistance which are precisely those employed by the state in its administration of the federally-aided AFDC program.

Conn. Gen. Stat. Ann. § 17-3a (Supp. 1974) provides

[&]quot;The welfare commissioner shall establish mandatory standards concerning the granting of general assistance by towns, including standards for investigation and eligibility and extent of need and procedures for record-beening and other office practices, all with the intent of aiding the towns and any districts established under section 17-273a in the efficient administration of the laws relating to granting of general assistance. The commissioner shall inform the towns and such districts of the standards so established and shall advise and assist them in their application thereof. The commissioner may recommend regional areas within which he considers it reasonable for towns to join in the establishment of such districts, and may advise the towns therein of such recommendations and his reasons therefor. The commissioner may withhold reimbursement, as provided in section 17-292, from any town or district which does not conform to such standards within the period of grace to be established by the commissioner."

This is clear from the admission of Deputy Velfare
Commissioner Henry Boyle in a deposition conducted in the
course of another law suit in which the Commissioner of Welfare
is also a defendant. Moore v. Punn, No. N74-146. Relevant
excerpts from the deposition transcript were made a part of
the record in this case without objection by the defendants.

The only real dispute between the parties is with regard to the interpretation of Instruction 732-5(III)(A)(7) which provides:

"The personnel responsible for certification of general assistance households shall meet the personnel standards specified in Section 271.1(g) of the revised Food Stamp Program Regulations issued July 29, 1971."

The plaintiffs contend that this means that the personnel who certify general assistance households for food stamps must satisfy the standards of Food Stamp Reg. § 271.1(g), 40 Fed. Reg. 1885 (1975). In support of this interpretation they argue that the word "certification" is a term of art within the context of food stamp regulations and instructions, see Food Stamp Reg. § 270.2(1), 40 Fed. Reg. 1882 (1975), meaning approval of an application for food stamps. The defendants, on the other hand, argue that the disputed provision means that the personnel who initially certify households for general assistance benefits must meet the standards of Food Stamp Reg. § 271.1(g). Their position is strongly supported by the requirement in Instruction 732-5(III)(A)(4) that responsibility for food stamp certification of general assistance

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[&]quot;Each State agency shall undertake the certification of applicant households in accordance with the personnel standards used by it in the certification of applicants for benefits under its federally aided public assistance programs."

Under 45 C.F.R. § 70.1 et seq. (1974) a merit system is mandated for personnel working in federally aided public assistance programs.

households be retained by the state agency. Thus, the plaintiffs' interpretation would render Instruction 732-5 (III)(A)(7) redundant of the requirement in (III)(A)(4).

Although inclined toward the defendants' interpretation of Instruction 732-5(III)(A)(7), this court finds it preferable to allow the FNS to pass upon the issue of whether the state's general assistance program satisfies that criterion. The language of the instruction is inherently ambiguous and thus it is appropriate here to allow the administrative agency responsible for its drafting to pass upon its meaning. Furthermore, even assuming the correctness of the defendants' interpretation, this court has before it no evidence with regard to whether "the personnel responsible for certification of general assistance households" in the towns of this state satisfy the standard of Food Stamp Reg. § 271.1(g).

In late 1971 the FNS questioned the decision of the defendants to treat households receiving general assistance as non-public assistance households. In fact, in a letter

A strict reading of that regulation would seem to mandate that the general assistance program in each town operate under a merit system which satisfies the standards of 45 C.F.R. § 70.1 et. seq. (1974). See note 32, supra. However, the FNS may not interpret FNS(FS) Instruction 732-5(III)(A)(7) to require complete parity between the local and state personnel standards. Furthermore, it is possible that many, although not all, towns in Connecticut have merit systems which satisfy the standards of 45 C.F.R. § 70.1 et. seq. (1974). It is not clear whether general assistance programs may be approved for processing under Food Stamp Reg. § 271.4(a)(1) for some communities in the state, but not all. Because there are ambiguities with regard to all these issues, the determination is best left to the FNS.

from the Northeast Regional Administrator of the FNS to the Commissioner of Welfare (December 20, 1971), the State Food Stamp Plan of Operation was approved

"contingent upon further review of the State general assistance programs. Therefore, we request that you submit to us by December 31, 1971 the information required [by] FNS (FS) Instruction 732-5, Section 4 [sic] for each political sub division in the State. Cities and towns hav[ing] comparable programs may be grouped for reporting purposes."

This information was apparently never provided to the FNS. It must be now.

This court thus determines that the requirements of Instruction 732-5(III)(A)(4), (5) & (6) are satisfied by the state's general assistance program. The defendants will be required to submit to the FNS a detailed, objective report containing all of the information requested in the letter quoted above pertaining to the requirement of Instruction 732-5(III)(A)(7). Should the FNS determine that the general assistance program, as operated in either all or parts of the state, satisfies that criterion, this court will then issue an order requiring the defendants to begin processing general assistance household applications pursuant to Food Stamp Reg. § 271.4(a)(1) in the entire state or the appropriate political subdivisions thereof.

"Failure to Process Applications Within 30 Days of Days of Application"

The plaintiffs maintain at the defendants have been violating Food Stamp Reg. § 2 .4(a)(3), supra, by failing to

process all applications within 30 days of their receipt and to notify applicant households as to whether they have been certified for food stamp benefits within the same period of time. There has never been any dispute between the parties as to the existence of this obligation. Rather, the dispute has centered upon the factual issue of whether or not the defendants were actually complying with the acknowledged regulatory mandate.

That dispute, however, has now been resolved by virtue of a stipulation submitted by the parties while this case was sub judice. In that stipulation, the defendants admit that "[t]here are applications for food stamps which do not get processed within 30 days." Stipulation of February 18, 1975, \$\forall 2\$. The extent of such noncompliance with \(\forall 271.4(a)(3) \) is not specified, nor is it particularly relevant. The regulation requires that each application shall be processed within 30 days and to the extent that there are cases in which this

The regulation requires that the state both "provide for the processing" of applications and "notify" applicants of action taken within 30 days. The crucial date, of course, is the date of certification, because it is from that date that benefits will run. However, the regulation also requires that applicants be notified of action taken within 30 days. In this state, certified applicants are notified by the mailing of their ATP cards. While there has been some dispute between the parties as to how the notification requirement may be satisfied, there can be no doubt that the beneficial effects which flow from the notice requirement could not be more effectively implemented than by using the ATP card as the notice; and, if it is placed in the mail by the end of 30 days, that is sufficient.

is not being done, the defendants are acting in derogation of the regulatory mandate.

The question of what relief should be afforded is slightly more troublesome. The plaintiffs have proposed two independent remedial means of dealing with cases in which the defendants fail to process applications within 30 days: presumptive eligibility and automatic forward adjustment. Under the former proposed remedy, all households whose applications are not acted upon within the 30 days would be presumed eligible at the end of that period and would be mailed an ATP card. The presumption would continue until a contrary determination were actually made. While probably effective, this remedy would undermine the requirement of 7 U.S.C. § 2014 (1970) that only those households which satisfy the uniform national standards of eligibility be certified for participation in the program. The certification of households whose applications have not been reviewed does not guarantee that result.

The plaintiffs' other proposed remedy, <u>automatic</u> forward adjustment, is more appropriate. Forward adjustment is a process designed by the courts, <u>see Bernudez v. United States</u>

<u>Dep't of Agriculture</u>, 490 F.2d 718 (D.C. Cir. 1973); <u>Carter v. Butz</u>, 479 F.2d 1084 (3d Cir.), <u>cert. denied</u>, 414 U.S. 1094 (1973); <u>Stevart v. Butz</u>, 356 F. Supp. 1345 (W.D. Ky. 1973), <u>aff'd</u>, 491 F.2d 165 (6th Cir. 1974), and accepted by the FRS, <u>see</u> 39 Fed. Leg. 13013 (1974), for the provision of retroactive benefits to participating households who have had their

food stamps wrongfully denied, delayed or terminated by reason of administrative error. Any "bonus" lost as a result of such error is provided retroactively, not by means of a cash payment, but rather through the reduction of the household's "purchase requirement." Thus, for example, a household, which has lost \$60 of "bonus" as a result of a delay in certification and which was certified to purchase \$150 worth of food stamps for \$90, would only have to pay \$30 for its stamps during the first month.

Normally, entitlement to a forward adjustment is determined through the process of a fair hearing. However, as the plaintiffs maintain, there is no need for requiring such a formal adjudication where the facts are clear and indisputable. That is the situation here. See Proposed Food Stamp Reg. § 271.1(q)(1) (i)-(iv), 39 Fed. Reg. 35179 (1974). Where certification is granted after the 30-day period, there should be no issue as to the household's entitlement to a forward adjustment that will include benefits from the 30th day following the date of application. The regulatory mandate is clear, there can be no circumstances justifying the delay, and the facts necessary for the determination

Note that this issue is independent of the plaintiffs' claim that benefits must be provided retroactively from the date of application, rather than from the date of certification. See infra. However, were the plaintiffs ultimately to prevail on that claim, that might require some revision of the relief provided under this claim.

of course, if the househol! fails to cooperate with the defendants by, for example, not providing necessary documents, then the application should be denied at the end of 30 days.

are easily available to the defendants. In such situations there is no reason why an aggrieved household should be required to initiate action by requesting a fair hearing, for since certification has been made, there would be no issue in dispute. Rather, the defendants will be required to carefully monitor the processing of both public assistance and non-public assistance applications (or affidavits) and in these cases where certification is granted beyond 30 days to provide an <u>automatic</u> forward adjustment for benefits lost as a result of the delay, beginning with the first month's allotment of food stamps.

"Failure to Provide Emergency ATP Issuance Where Card is Lost, Stolen.or Otherwise Rendered Unusuable"

The plaintiffs contend that the defendants have failed to implement FNS(FS) Instruction 734-2(VI)(C) (1969) which provides in relevant part:

"Emergency ATP Cards - In emergency cases (newly certified households in immediate need, loss or theft of ATP's, etc.) immediately prepare those ATP's which the household will need in order to participate before the next regular preparation of ATP's." 37/

In full, that section provides:

[&]quot;Emergency ATP Cards - In emergency cases (newly certified households in immediate need, loss or theft of ATP's, etc.) immediately prepare those ATP's which the household fill need in order to participate before the new regular preparation of ATP's. Either the CU artifying

The application of this provision to the situation of zero purchase households has already been considered, <u>supra</u>. The instant claim is specifically addressed to the defendants' alleged failure to formally implement an emergency program to cover situations wherein an ATP card is lost, stolen, not mailed through administrative error, or otherwise, in the plaintiffs' words, "rendered unusable." By the phrase "rendered unusable," the plaintiffs seem to have in mind a situation in which a household upon receipt of its ATP card does not have the money to purchase food stamps and is thus unable to use the ATP card.

The defendants admit that no formal instructions have been issued to food stamp personnel to implement the requirements of Instruction 734-2(VI)(C). However, they have presented evidence that emergency ATP cards are being issued where cards are lost, stolen or mutilated for households who come into a district office and fill out an affidavit. The central office is immediately told by the district office to cancel the original ATP and apparently a new card is placed

^{37/}

unit] or the MDPU [machine data processing unit] may prepare emergency ATP's provided that there are no delays in allowing the household to participate. When the monthly processing of executed ATP cards (paragraph D below) reveals that a household has used both regular and replacement ATP's to acquire more bonus coupons than they are certified to receive, the MDPU shall immediately notify the CU to determine if a claim against the household is warranted."

in the mail that same day. 38/ The defendants admit that it is not official policy to require certification workers to inform participants of this procedure and apparently no provision is made for hardship cases where the participant is unable to travel to the district office to sign the affidavit.

Although the defendants are currently operating an emergency issuance procedure which substantially complies with Instruction 734-2(VI)(C), the failure to issue written instructions to program personnel violates Food Stamp Reg. § 271.4(a)(8), 40 Fed. Reg. 1891 (1975) which provides, in part, that "[t]he State agency shall issue written program instructions to personnel responsible for the certification of applicant households." The defendants shall therefore be required to draft such instructions which shall direct certification workers to inform participating households of the emergency procedures.

In addition, the failure to make provision for hardship cases violates the overall purpose of the Food Stamp
Act, to wit, "to safeguard the health and well-being of the
Nation's population and raise levels of nutrition among louincome households." 7 U.S.C. § 2011 (1970). The defendants
shall therefore include in their written instructions a provision permitting telephone applications for replacement
emergency ATP cards under the same set of circumstances to be

In January 1974, 238 such emergency cards were issued; 18 in February 1974; 2.4 in March; and 111 in the first half of April

provided for in their revised "full participation" program.

Sec supra.

However, the defendants may restrict the emergency issuance plan to cover those situations involving lost, stolen, mutilated or unmailed ATP cards. There is no basis for expanding the coverage of Instruction 734-2(VI)(C) to include situations wherein the ATP card is "rendered unusable" because the household does not have the money to purchase food stamps at the time it receives its ATP card. To a considerable extent, this is the kind of situation which the variable purchase plan was designed to ameliorate.

"Failure to Provide Benefits Retroactive to the Date of Application"

The plaintiffs challenge the unequal treatment which results from the application of Conn. Welfare Reg. FS-520.31 - 520.32. FS-520.31 provides that those persons on a monthly basis of coupon issuance whose applications for food stamps are approved before the 11th of the month will receive a monthly allotment to be used within that month and, of course, another allotment at the beginning of the following month. Persons whose applications are approved on the 12th of the month or later receive a one-month allotment which must cover

In some circumstances, including that of plaintiff Ethel Williams, the inability to purchase food stamps is the direct result of the Welfare Department's failure to send participants their assistance checks on schedule. In such cases, the hardship can be, and apparently is being, remedied by provision for obtaining quick replacement of the missing assistance check.

through the end of the next month. Thus, persons who apply for benefits on the same day may be very differently treated, depending solely upon the date of approval of their applications. FS-520.31 provides a similar scheduling for those on a semi-monthly basis of coupon issuance.

tions conflict with any federal statute or regulation and thus no Supremacy Clause issue is presented. Rather they contend that the regulations violate the equal protection clause of the fourteenth amendment and are thus unconstitutional. This court lacks the jurisdiction to consider their claim. As the plaintiffs seek a permanent injunction restraining the operation of state regulations of statewide application upon the grounds of their unconstitutionality, a three-judge panel of the district court would have to be convened to consider their claim. 28 U.S.C. § 2281 (1970);

"An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

The plaintiffs claim that there is no need for convening a three-judge panel in the instant case because any defense to their claim has been rendered insubstantial by virtue of this

^{40/} 28 U.S.C. § 2281 (1970) provides:

see Oklahoma Gas Co. v. Russeli, 261 U.S. 290 (1923).

However, the court has been informed that a new hand-book of state regulations relating to the food stamp program is in the process of being put into effect, see note 22, supra. Since the proposed new handbook contains no regulation tracking FS-520.31 - 520.32, the target of the constitutional attack, the issue may no longer require a court of three judges. Convocation of a three-judge panel shall therefore be held in abeyance pending further clarification.

40/ cont'd

court's opinion in Class v. White, No. 14,764 (D. Conn. June 16, 1972). In that case it was held that a similar regulation dealing with welfare benefits was in conflict with a federal regulation requiring the provision of assistance on an objective and equitable basis. In addition, and without a full discussion of the issue, it was held that the regulation also wiolated the equal protection clause of the fourteenth amendment.

Under Bailey v. Patterson, 369 U.S. 31, 33 (1962), "three judges are ... not required when ... prior decisions make frivolous any claim that a state statute on its face is not unconstitutional." Prior decisions of the Supreme Court can render a defense insubstantial as probably can decisions of the Second Circuit. Cf. Nieves v. Oswald, 477 F.2d 1109, 1112 (2d Cir. 1973). However, an opinion of a district court, although of perhaps persuasive precedental value, is not binding upon this court and thus cannot have the same effect. This is particularly true where, as here, the prior opinion upon which the plaintiffs rely involved a different, albeit analogous, regulation and did not fully discuss the constitutional issue.

The decision in Class v. White, supra, however, does highlight the abstantiality of the plainties' claim for the purposes of three-judge jurisdiction. Goosby v. Osser, 409 U.S. 512 (1973).

"60-Day Continuing Certification Following Intrastate Move of Recipient Households"

The plaintiffs challenge the alleged failure of the defendants to implement the requirement of Food Stamp Reg. § 271.4(a)(6), 40 Fed. Reg. 1891 (1975) which provides in relevant part:

"Certification continuation. The State agency shall provide for continuing the certification for 60 days after the date of its move of any household which moves from one project area to another."

See 7 U.S.C. § 2019(c) (1970); FNS(FS) Instruction 732-1(VIII)
(A); Handbook §§ 2420-2427 at 127-135.

Neither of the named plaintiffs who raise this claim falls within the protection of this provision. Plaintiff Robin Jackson alleges that she and her family moved within the town of South Norwalk and failed to receive 60-day certification. Quite clearly her move was not from one project area to another.

Similarly, but less obviously, the same is true of plaintiff Fern Carver. She complained that although she had notified the Manchester subdistrict office of the State Welfare Department of her move from the town of Vernon to the adjoining town of Tolland, the defendants continued to mail her ATP cards to her former address. Both Vernon and Tolland are within the same food stamp certification administrative district. It would thus appear that her move was not from one project area to another.

This is so despite the definition of "project area" at Food Stamp Reg. § 270.2(pp), 40 Fed. Reg. 1883 (1975) as being "the political subdivision within a State which has been approved for participation in the program by the Department." Although it is not clear what a political subdivision is for the purposes of the food stamp program, it would most comport with the purpose of 7 U.S.C. § 2019(c) and Food Stamp Reg. § 271.4(a)(6) to interpret it here as including all towns within the same certification district. That statutory purpose is to insure that those participating households who move from one project area to another not lose their food stamp benefits following their move because of the delay involved in reapplying for benefits at their new location. Where the household moves within a project area there would be no danger of such loss, because the certifying office of that project area could just note a change of address on the household's file and continue sending ATP cards to the new address. There would be no need to reapply for benefits following such a move.

That is the precise situation here. A certification worker in this state, upon receiving a telephone call from a recipient household, fills out a form and notes the change in the case file. If anything, plaintiff Carver was the victim of an administrative error.

The defendants have no obligation to implement the policy of § 271.4(a)(6) to cover moves from one location to another within a food stamp certification administrative district. Although they may have such an obligation to

implement such a program to cover moves between districts, these plaintiffs do not have the standing to raise that claim, $\frac{41}{}$

Relief

As the state food stamp program, as operated by the defendants, has been found not in compliance with the Food Stamp Act and the regulations and instructions promulgated thereunder in the respects discussed above, an order is necessary to secure future compliance. Accordingly, it is ordered that:

I. Within 30 days of this order the defendants shall submit to this court for approval a "full participation" plan including elements addressed to both the "informational" and

^{41/} It is difficult to understand why the plaintiffs have so vigorously advanced this claim even with regard to interdistrict moves. The defendants have adopted a written policy, Conn. Welfare Reg. FS-650 (1973), which provides for interdistrict continuing certification. As in the case of intradistrict moves, the household need only inform the district office by telephone that it is moving and the case file is then forwarded to the district office in the area to which the household is moving. This is a simplified procedure which does not require the participant to travel to the district office, a burden which the plaintiffs have sought to have lifted in a number of their other claims. The 60-day continuing certification plan, as outlined in Handbook §§ 2420-2427 at 127-135, on the other hand, would provide minimal additional benefits to very few households and would require the participant to fill out a form in the district office and submit a copy of it to the district office in the area to which

"insurance" requirements of 7 U.S.C. § 2019(e)(5) (1970).

- (a) The informational or "outreach" part of the plan must include, at a minimum, concrete programs and proposals for:
 - (1) intensifying efforts to secure immediately the cooperation of other federally-funded agencies and organizations, as well as community and private groups;
 - (2) the employment of a <u>full time</u> "outreach" director and the assignment of district employees as local "outreach" coordinators; and
 - (3) a full scale and continuing media campaign to inform low income households of the availability of food stamps, changes in the program, procedures for applying and certification office locations.

In addition, the defendants are to consider the possible use of a toll-free number which low income households could call to secure information about the program, and door-to-door canvassing in high-density, low-income neighborhoods. In preparing this plan, the defendants should be receptive to suggestions offered by the plaintiffs and should consult other states with successfully operating "outreach" programs.

(b) The "insurance" part of the plan must precide for the simplification and expedition of certification poecedures. The defendants are to review their current procedures to determine in what way they can be improved in the interest of insuring full participation. At a minimum, nowever, the plan must provide for:

- (1) a written directive to and in-service training for local certification staff to insure that persons making initial inquiries about food stamps are informed of their right to apply for benefits immediately either in person or through the mail and are encouraged to do so; and
- (2) the conducting of telephone and home interviews under a wider range of circumstances than currently allowed, including situations in which no household representative is able to visit the district office or circuit-riding location because of sickness, injury, lack of transportation or the presence of pre-school or other persons in the home requiring care.

In addition, the defendants must consider soliciting the cooperation of federally-funded agencies and organizations and private and community groups in providing transportation services for applicants and assisting them in completing application forms. The current circuit-riding program should be continued and consideration should be given to its expansion.

II. Within 60 days of this order, the defendants shall fully implement a variable purchase option plan which satisfies the minimal requirements of FNS(FS) Instruction 734-6(IV).

III. Within 30 days of this order, the defendants shall issue a written directive to local certification workers requiring them to consider the eligibility for 30-day preliminary certification of <u>all</u> households reporting an income so low as to make them eligible for a zero purchase requirement. In addition, they shall take steps to insure that within 30

days all households approved for such preliminary certification will receive their ATP cards as expeditiously as possible, but, in any event, more rapidly than the one-week period now normally required for processing. The defendants shall submit to this court and to the plaintiffs a monthly report indicating the number of such 30-day certifications approved during the previous month and the average period of time required for receipt of such ATP cards by certified households.

IV. Within 30 days of this order, the defendants shall prepare a detailed and objective report of the personnel standards for employees certifying households for general assistance benefits in each political subdivision of this state. Said report shall be submitted to this court and to the plaintiffs and an opportunity shall be provided for comments and changes suggested by the plaintiffs. The report shall then be submitted to the FNS for its determination as to whether the general assistance program within all or parts of the state satisfies the requirement of FNS(FS) Instruction 732-5(III)(A)(7). The defendants shall report the decision of the FNS to this court for its possible further action.

V. (a) The defendants shall take immediate action to insure that the applications of all public assistance and non-public assistance households are processed within 30 days and that such households are notified of the action taken within the same period of time. The 30-day period shall commence

with the receipt at the district office of a signed application or affidavit and the notification requirement shall be satisfied by the mailing of an ATP card or notice of denial within the 30-day period.

(b) In those cases in which certification occurs after the 30-day period, the defendants shall provide an automatic forward adjustment for lost benefits, beginning with the food stamp allotment for the first month. The defendants shall inform affected households that such remedial action has been taken. Within 30 days of this order, the defendants shall submit for court approval a regulation setting forth procedures for the implementation of this section of the order.

Nothing in this order shall prevent a household from obtaining a fair hearing should it disagree for some reason with the defendants' determination with regard to entitlement to or the amount of a forward adjustment.

(c) The defendants shall include a notice with the next ATP card mailed to all participating households, informing them of their right to apply for a forward adjustment for any benefits which they may have lost as a result of a delay in the initial provision of food stamps to them. The defendants shall endeavor to settle such claims informally and expeditiously, but where this is not possible, the claimants shall be afforded a fair hearing.

The thrust of this provision of the order is to make the automatic award of forward adjustments prospective only. In

(d) The defendants shall file monthly reports, with copies to counsel for the plaintiffs, detailing the processing of both public assistance and non-public assistance applications. Each report shall specify the number of applications held pending from the previous reporting period, the disposition of all applications during the reporting period, indicating how many were approved, denied or held pending, and a breakdown of the cases pending in excess of 30 days in 5-day increments. In addition, the defendants shall report the number of cases in which automatic forward adjustments were provided. With the first such report, the defendants shall submit a detailed description of the method used for obtaining the statistics contained therein. Any subsequent modification of that method shall be reported.

VI. Within 30 days of this order, the defendants shall promulgate a regulation providing for emergency and immediate replacement of ATP cards that are lost, stolen, mutilated or not mailed through administrative error. Said regulation shall provide for informing participating households of this service and for permitting application under the same hardship circumstances detailed above with regard to the "full participation" program.

42/ cont. d

view of the increased burden already being imposed upon certification personnel, it does not appear apprepriate to require them to make an exhaustive review of all prior case files to discover possible past delayed certifications.

VII. Within 45 days of this order, the defendants shall conduct in-service workshops for all district directors and local certification workers to explain the changes ordered herein and insure their full implementation.

VIII. At 60-day intervals the defendants shall file written reports which detail as of each reporting period (1) what action has been taken to comply with the several elements of this order, and (2) with regard to continuing programs, what further actions are scheduled.

Convocation of a three-judge panel of the district court to consider the plaintiffs' challenge to Conn. Welfare Reg. FS-520.31 - 520.32 will be held in abeyance, pending further clarification of whether there is a regulation to be challenged, with leave to move for the convocation of a three-judge court thereafter.

The prayer for attorneys' fees is denied, but costs are awarded to plaintiffs. In all other remaining respects the plaintiffs' prayer for relief is denied. It is

SO ORDERED.

Dated at Hartford, Connecticut, this 24 day of February, 1975.

M. Joseph Blumen: eld United States District Judge

MAR 5 1975

UNITED STATES DISTRICT COURT MICROFILM DISTRICT OF CONNECTICUT

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ANNIE TYSON, ET AL

vs.

. 'ARTFORD

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CIVIL ACTION NO. H-74-95

NICHOLAS NORTON, Individually :::: and as Commissioner of the :::: State of Connecticut Welfare :::: Department, ET AL ::::

JUDGMENT

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This action having come before the Court by the Ronorable M. Joseph Blumenfeld, United States District Judge;

And the Court having filed its Memorandum of Decision:

It is accordingly ORDERED and ADJUDGED as follows:

- I. Within 30 days of this order the defendants shall submit to this court for approval a "full participation" plan including elements addressed to both the "informational" and "insurance" requirements of 7 U.S.C. \$2019(e)(5) (1970).
- (a) The informational or "outreach" part of the plan must include, at a minimum, concrete programs and proposals for:
 - (1) intensifying efforts to secure immediately the cooperation of other federally-funded agencies and organizations, as well as community and private groups;
 - (2) the employment of a full time "outreach" director and the assignment of district employees as local "outreach" coordinators; and
 - (3) a full scale and continuing media campaign to inform low income households of the availability of food stamps, changes in the program, procedures for applying and certification office locations.

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...

In addition, the defendants are to consider the possible use of a toll-free number which low income households could call to secure information about the program, and door-to-door canvassing in high-density, low-income neighborhoods. In preparing this plan, the defendants should be receptive to suggestions offered by the plaintiffs and should consult other states with successfully operating "outreach" programs.

- (b) The "insurance" part of the plan must provide for the simplification and expedition of certification procedures. The defendants are to review their current procedures to determine in what way they can be improved in the interest of insuring full participation. At a minimum, however, the plan must provide for:
 - (1) a written directive to and in-service training for local certification staff to insure that persons making initial inquiries about food stamps are informed of their right to apply for benefits immediately either in person or through the mail and are encouraged to do so; and
 - (2) the conducting of telephone and home interviews under a wider range of circumstances than currently allowed, including situations in which no household representative is able to visit the district office or circuit-riding location because of sickness, injury, lack of transportation or the presence of pre-school or other persons in the home requiring care.

In addition, the defendants must consider soliciting the cooperation of federally-funded agencies and organizations and private and community groups in providing transportation services for applicants and assisting them in completing application forms. The current circuit-riding program should be continued and consideration should be given to its expansion.

II. Within 60 days of this order, the defendants shall fully implement a variable purchase option plan which satisfies the minimal requirements of FNS(FS) Instruction 734-6(IV).

shall issue a written directive to local certification workers requiring them to consider the eligibility for 30-day preliminary certification of all households reporting an income so low as to make them eligible for a zero purchase requirement. In addition, they shall take steps to insure that within 30 days all households approved for such preliminary certification will receive their ATP cards as expeditiously as possible, but, in any event, more rapidly than the one-week period now normally required for processing. The defendants shall submit to this court and to the plaintiffs a monthly report indicating the number of such 30-day certifications approved during the previous month and the average period of time required for receipt of such ATP cards by certified households.

IV. Within 30 days of this order, the defendants shall prepare a detailed and objective report of the personnel standards for employees certifying households for general assistance benefits in each political subdivision of this state. Said report shall be submitted to this court and to the plaintiffs and an opportunity shall be provided for comments and changes suggested by the plaintiffs. The report shall then be submitted to the FNS for its determination as to whether the general assistance program within all or parts of the state satisfies the requirement of FNS(FS) Instruction

732-5(III)(A)(7). The defendants shall report the decision of the FNS to this court for its possible further action.

- V. (a) The defendants shall take immediate action to insure that the applications of all public assistance and non-public assistance households are processed within 30 days and that such households are notified of the action taken within the same period of time. The 30-day period shall commence with the receipt at the district office of a signed application or affidavit and the notification requirement shall be satisfied by the mailing of an ATP card or notice of denial within the 30-day period.
- (b) In those cases in which certification occurs after the 30-day period, the defendants shall provide an <u>automatic</u> forward adjustment for lost benefits, beginning with the food stamp allotwent for the first month. The defendants shall inform affected households that such remedial action has been taken. Within 30 days of this order, the defendants shall submit for court approval a regulation setting forth procedures for the implementation of this section of the order.

Nothing in this order shall prevent a household from obtaining a fair hearing should it disagree for some reason with the defendants' determination with regard to entitlement to or the amount of a forward adjustment.

(c) The defendants shall include a notice with the next ATP card mailed to all participating households, informing them of their right to apply for a forward adjustment for any benefits which they may have lost as a result of a delay in the initial provision of food stamps to them. The

defendants shall endeavor to cortle such claims informally and expeditiously, but where this not possible, the claimants shall be afforded a fair hearing.

(d) The defendants shall file monthly reports, with copies to counsel for the plantiffs, detailing the processing of both public assistance and non-public assistance applications. Each report shall specify the number of applications held pending from the previous reporting period, the disposition of all applications during the reporting period, indicating how many were approved, denied or held pending, and a breakdown of the cases pending in excess of 30 days in 5-day increments. In addition, the defendants shall report the number of cases in which automatic for vard adjustments were provided. With the first such report, the defendants shall submit a detailed description of the method used for obtaining the statistics contained therein. Any subsequent modification of that method shall be reported.

VI. Within 30 days of this order, the defendants shall promulgate a regulation providing for emergency and immediate replacement of ATP cards that are lost, stolen, mutilated or not mailed through administrative error. Said regulation shall provide for informing participating households of this service and for permitting application under the same hardship circumstances detailed above with regard to the "full participation" program.

VII. Within 45 days of this order, the defendants shall conduct in-service workshops for all district directors and local certification workers to explain the changes ordered herein and insure their full implementation.

VIII. At 60-day intervals the defendants shall file written reports which detail as of each reporting period (!) what action has been taken to comply with the several elements of this order, and (2) with regard to continuing programs, what further actions are scheduled.

Plaintiffs' request for attorneys' fees is denied, as are all other claims for relief of Plaintiffs. Costs of this action, if any, are awarded to Plaintiffs.

Dated at Hartford, Connecticut, this 25 day of February, 1975.

M. Joseph Blumenfeld
United States District Judge

